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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054551
Party	Plaintiff Andrey Pinsky
Correspondence Address	ANDREY PINSKY PINSKY LAW 45 SHEPPARD AVE EAST SUITE 900 TORONTO, ON M2N 5W9 CANADA andrey@pinskylaw.ca
Submission	Reply in Support of Motion
Filer's Name	Andrey Pinsky
Filer's e-mail	andrey@pinskylaw.ca
Signature	/Andrey Pinsky/
Date	03/26/2012
Attachments	2012-03-23 (Petiotner's Supplimentary Submissions).pdf (96 pages)(4273623 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY,

Petitioner,

v.

DOUGLAS BURDA

Registrant.

Cancellation No. 92054551

**PETITIONER 'S SUPPLEMENTARY SUBMISSIONS TO
PETITIONER'S MOTION TO COMPEL REGISTRANT
TO COMPLY WITH DISCOVERY REQUESTS**

AND

**PETITIONER 'S SUPPLEMENTARY SUBMISSIONS TO
PETITIONER'S MOTION TO REMOVE
INTERLOCUTORY ATTORNEY ELIZABETH A. DUNN**

Petitioner, Andrey Pinsky (Petitioner), hereby makes supplementary submissions ("Supplementary Submissions") to his Motion To Compel Discovery ("Motion to Compel Discovery") (ESTTA entries #29, #30, and #31) filed in the current trademark cancellation proceeding on February 17, 2012. PETITIONER'S MOTION TO COMPELL DISCOVERY is supported by Petitioner's BRIEF IN SUPPORT OF MOTION provided in the ESTTA entries #29, #30, #31, declaration of Andrey Pinsky dated December 29, 2011 ("Declaration 1"), declaration of Andrey Pinsky of February 28, 2012 ("Declaration 2"), declaration of Andrey Pinsky dated March 20, 2012 ("Declaration 3"), and declaration of Andrey Pinsky dated March 23, 2012 ("Declaration 4"), Petitioner's BRIEF IN SUPPORT OF SUPPLEMENTARY SUBMISSIONS below, and the papers on file with the TTAB in this matter, and any other matters properly before the TTAB.

I. BRIEF IN SUPPORT OF SUPPLEMENTARY SUBMISSIONS

1. Petitioner files his Supplementary Submissions in reply to Registrant's Opposition ("Opposition to Motion to Compel Discovery") dated March 16, 2012 (ESTTA entry #36), to Petitioner's Motion to Compel Registrant to Comply with Discovery Requests dated February 17, 2012 (ESTTA entries #29, #30, and #31) ("Motion to Compel Discovery"). Registrant did not apply numbers to paragraphs of his Opposition to Motion to Compel Discovery. Petitioner applied numbers in a sequential order to all paragraphs of the Opposition to Motion to Compel Discovery. (**Declaration 4, Exhibit 1.**)
2. Petitioner files his Supplementary Submissions in reply to Registrant service of his Initial Disclosures and his First Supplementary Disclosures and fifty-four (54) pages of documents served with the First Supplementary Disclosures. (**Declaration 4, Exhibit 2 and Declaration 4, Exhibit 3.**)
3. Petitioner's discovery requests are attached as **Exhibit 4** to **Declaration 4**.
4. Petitioner files his Supplementary Submissions in reply to Registrant service of his Reply to Petitioner's Document Requests **Exhibit 5. (Declaration 4, Exhibit 5.)**
5. Notably, Registrant's Opposition to Motion to Compel Discovery is not supported by an affidavit or declaration.
6. Notably, Registrant submitted no exhibits with his Opposition to Motion to Compel Discovery. Having produced self-serving evidence without an affidavit or declaration, and without any exhibits, Registrant then developed arguments of his Opposition to Motion to Compel Discovery.
7. In the paragraph 4 of Opposition to Motion to Compel Discovery, Registrant deliberately makes a false submission to the TTAB that "Petitioner has concocted a complex mailing and service scheme utilizing the limitations of Federal Express as a means to do so." This is a deliberate falsehood unsupported by any evidence.
8. Further, in paragraph 4, Registrant makes a deliberately false submission to the TTAB that: "Petitioner refers to a set of documents that Petitioner never served. See Petitioner's Motion to Compel, TTAB Case File Nos. 32-34 at 173-179. Notably, this set of documents is different from the documents that

Case File Nos. 32-34 at 173-179. Notably, this set of documents is different from the documents that Petitioner originally filed with the Board as its "initial disclosures." Registrant is well aware that he was served with Petitioner's initial disclosures together with Declaration of Andrey Pinsky of December 29, 2011. The declaration was attached as Exhibit 1 to Petitioner's initial disclosures. Registrant is also well aware that Petitioner filed with the TTAB only his Declaration as the most important part of his initial disclosures. The declaration consisted *inter alia* of evidence of the date of first use of Petitioner's trademark CONCEPT LAW in commerce and affidavits and declarations of sixteen (16) United States trademark and patent attorneys in support of Petitioner's Petition to Cancel Registrant's registration. Registrant false submissions to the TTAB are the part of the same ploy he started when he falsely claimed that he was not served with Petitioner's initial disclosures on January 6, 2011, in order to bring his Motion for Default Judgement. In fact, FedEx delivered to Registrant Petitioner's initial disclosures on December 31, 2011. However, Registrant did not call to Petitioner and did not falsely claim that did not receive Petitioner's initial disclosures until January 5, 2012. The conversation between Registrant and Petitioner took place on the following day of January 6, 2012. Registrant falsely alleged that did not receive Petitioner's initial disclosures. Petitioner promised to serve initial disclosures second time. When Petitioner served his initial disclosures on Registrant second time on January 6, 2012, Registrant on January 9, 2012, refused to accept FedEx delivery of the Petitioner service. After January 9, 2012, Registrant ceased all communication with Petitioner until February 15, 2012, when without any warning he filed his Motion for Default Judgement.

9. In the paragraph 5 of Opposition to Motion to Compel Discovery, Registrant deliberately makes a false submission to the TTAB that "Petitioner appears to have falsified a certificate of service of same, despite that Petitioner never served such initial disclosures. See Petitioner's Motion to Compel, TTAB Case File Nos. 32-34 at 179." This is a deliberate falsehood unsupported by any evidence.
10. In the paragraph 6 of his Opposition to Motion to Compel Discovery, Registrant deliberately makes a false submission to the TTAB that Petitioner filed his Motion to Compel Discovery on February 15, 2012. Petitioner filed his Motion to Compel Discovery on February 17, 2012.

11. On November 29, 2011, during the Discovery Conference, Registrant and Petitioner agreed to expend initial disclosures required by *Federal Rule of Civil Procedure* 26(a) to include proof of the first date of use of our trademarks in commerce. As was stated in the Discovery Conference Summary released on December 1, 2011, "this stipulation is intended to save both parties time and money but does not replace or prevent discovery on the issue of first use if either party believes it necessary."
12. In the paragraph 8 of his Opposition to Motion to Compel Discovery, Registrant states: "Registrant believes it to be in the best interest of the Board and the parties, in the spirit of judicial economy, to respond to petitioner's discovery requests at this time without waving any objection thereto at a future time. As such, Registrant has as of the date of this Opposition, served Petitioner with Registrant's Responses to petitioner's Document Requests."
13. This is an empty and meritless rhetoric.
14. Registrant's Initial Disclosures are attached as **Exhibit 2 to Declaration 4**. Registrant's First Supplementary Disclosures along with documents produced by Registrant are attached as **Exhibit 3 to Declaration 4**. Petitioner's discovery requests are attached as **Exhibit 4 to Declaration 4**. Registrant's Responses to Petitioner's discovery requests are attached as **Exhibit 5 to Declaration 4**.
15. Registrant's Initial Disclosures (**Exhibit 2**) are boilerplate, useless disclosures that only provided a publicly available certificate of registration of Registrant's trademark KONCEPT. Registrant's Initial Disclosures in no way complied with the agreement reached by the parties during the Discovery Conference on November 29, 2011, to provide expanded initial disclosures and to provide proof of the date of first use of their trademarks in commerce. Registrant's Initial Disclosures also did not comply with the TTAB order dated December 1, 2011.
16. Registrant's First Supplementary Disclosures (**Exhibit 3**) are perfunctory and useless disclosures that provided fifty-four (54) pages of documents that almost entirely consist of email correspondence exchanged between Registrant and Petitioner immediately before and immediately after the service of the Petition to Cancel. None of these documents provide evidence of first date of use of Registrant's trademark KONCEPT in commerce. None of these documents provide evidence in support of

Registrant's affirmative defences to the Petition to Cancel. This is just another Registrant's cynical attempt to stonewall Petitioner's discovery requests by serving Petitioner with copies of the emails Petitioner himself already has on file.

17. Registrant's responses to Petitioner's Discovery Requests (**Exhibit 5**) are boilerplate, generic refusals to produce any and all documents in support of Registrant's defences to Petitioner's Petition to Cancel. The Registrant's refusals have numerous spelling mistakes that are evidence that Registrant cut and pasted his refusals without a second thought.
18. Notably, Registrant, refused to produce even the file for the trademark application KONCEPT. Registrant stated that this information is privileged.
19. While lawyer's opinion about registrability of a trademark may be in certain circumstances privileged, the contents of a trademark application file, in general, and trademark searches made prior to selecting the trademark and prior to filing of an application for registration, in particular, are not privileged and are discoverable. See *Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged).
20. Registrant in the three months starting from the opening of the discovery period on January 1, 2012, produced no relevant documents whatsoever. Registrant's strategy in this cancellation proceeding at this point is: (1) to waste as much discovery time as possible; (2) to file a barrage of meritless procedural motions; and (3) to stonewall Petitioner's discovery requests and to refuse production of any and all relevant documents. This strategy makes mockery of the discovery process and completely relies on interlocutory attorney Dunn's willful blindness to Registrant deceitful and dilatory conduct.
21. The TTAB's Manual of Procedure Third Edition in paragraph 406.01 as far as the duty to cooperate is concerned states: "The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not. Each party and its attorney or other authorized representative has a duty not only to make a good

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faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. Discovery before the Board is not governed by the concept of priority of discovery - that is, a party is not relieved of its discovery obligations, including its duty to cooperate, in spite of the fact that an adverse party wrongfully may have failed to fulfill its own obligations."

22. Petitioner does not view Registrant's failure to comply with Petitioner's discovery requests as an accident, given the protracted history of deceitful and dilatory conduct and stall and delay tactics employed by Registrant throughout this proceeding which were and are effectively endorsed by attorney Dunn. Consequently, Petitioner respectfully requests the TTAB to make the following orders:

- (a) Order removing interlocutory attorney Elizabeth A. Dunn from responsibility for the current cancellation file;
- (b) Order to reset the discovery dates of this cancellation proceeding;
- (c) Order directing the parties to communicate and to serve all documents exclusively via fax;
- (d) Order compelling Registrant to produce (by way of a declaration or an affidavit), not later than April 15, 2012, all documents requested by Petitioner in his discovery requests of December 29, 2011, January 6, 2012, January 16, 2012, and February 13, 2012, and which are in Registrant's possession, custody, or control **without making any arguments to their relevance and without making any refusals**, and specifically stating in his declaration that Registrant produced all documents in his possession, custody, or control;
- (e) Order striking with prejudice, and without a right to file new answers, Registrant's Second Amended Answer if Registrant fails to produce by April 15, 2012, all documents requested by Petitioner in his discovery requests of December 29, 2011, January 6, 2012, January 16, 2012, and February 13, 2012;
- (f) Order finding Registrant in default if Registrant fails to produce by April 15, 2012, all documents requested by Petitioner in his discovery requests of December 29, 2011, January 6,

7

2012, January 16, 2012, and February 13, 2012, and Order cancelling Registrant's registration for the trademark Konzept (No. 3981394);

(g) Order for Registrant not to file any motions without obtaining a leave of the TTAB;

(h) Order dismissing Registrant's Motion for an Extension of Time dated March 9, 2012, (ESTTA entry #32).

Petitioner submits that it is only in this way that the TTAB can effectively deal with Registrant's deceitful conduct and his ongoing abuses of the cancellation process.

March 23, 2012

Respectfully submitted



Andrey Pinsky
Pinsky Law
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45 Sheppard Avenue East
Toronto, Ontario, M2N 5X7
CANADA
Phone: (416) 221-2600
Fax: (416) 221-2640
andrey@pinskylaw.ca

CERTIFICATE OF FILING

I hereby certify that a true and complete copy of the foregoing PETITIONER'S SUPPLEMENTARY SUBMISSIONS and DECLARATION OF ANDREY PINSKY DATED MARCH 23, 2012, are being electronically transmitted to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office on March 26, 2012.

By:



Andrey Pinsky

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S SUPPLEMENTARY SUBMISSIONS and DECLARATION OF ANDREY PINSKY DATED MARCH 23, 2012, have been served on Douglas Burda by sending copies via FedEx on March 23, 2012 to:

DOUGLAS BURDA
KONCEPT INNOVATIVE LAW
UNIT 1009
900 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA, 89101
USA

By:



Andrey Pinsky

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY,

Petitioner,

v.

Cancellation No. 92054551

DOUGLAS BURDA

Registrant.

DECLARATION OF PETITIONER, ANDREY PINSKY,
DATED MARCH 23, 2012

I, Andrey Pinsky, of Toronto, Ontario, Canada, pursuant to 28 U.S.C. § 1746, HEREBY
DECLARE THAT:

1. I am Petitioner in this cancellation proceeding. Therefore, I have knowledge of matters to which I hereafter depose except where I expressly state that my knowledge is based on information and belief. In such circumstances I will identify the basis of my information and belief.
2. I am an intellectual property and business lawyer licensed to practice in Ontario, Canada. I am admitted to practice before Canadian Intellectual Property Office and the United States Patent and Trademark Office (USPTO). I provide my intellectual property and business law services to residents of Canada, to residents of the United States of America, and to international clients.
3. I am providing this declaration in reply to Registrant's Opposition ("Opposition to Motion to Compel Discovery") dated March 16, 2012 (ESTTA entry #36), to Petitioner's Motion to Compel Registrant to Comply with Discovery Requests dated February 17, 2012 (ESTTA entries #29, #30, and #31) ("Motion to Compel Discovery"). Registrant did not apply numbers to paragraphs of his Opposition to Motion to Compel Discovery. I applied numbers in a

sequential order to all paragraphs of the Opposition to Motion to Compel Discovery. (A true and correct copy of Registrant's Opposition to Motion to Compel Discovery is attached as **Exhibit 1.**)

4. I am also providing this declaration in reply to Registrant service of his Initial Disclosures and his First Supplementary Disclosures and fifty-four (54) pages of documents served with the First Supplementary Disclosures. (A true and correct copy of Registrant's Initial Disclosures is attached as **Exhibit 2.** A true and correct copy of Registrant's First Supplementary Disclosures and attached documents is attached as **Exhibit 3.**)
5. My discovery requests are attached as **Exhibit 4.** (A true and correct copy of Petitioner's discovery requests is attached as **Exhibit 4.**)
6. I am also providing this declaration in reply to Registrant service of his Reply to Petitioner's Document Requests **Exhibit 5.** (A true and correct copy of Registrant's Responses to Petitioner's Document Requests is attached is attached as **Exhibit 5.**)
7. Notably, Registrant's Opposition to Motion to Compel Discovery is not supported by an affidavit or declaration.
8. Notably, Registrant submitted no exhibits with his Opposition to Motion to Compel Discovery. Having produced self-serving evidence without an affidavit or declaration, and without any exhibits, Registrant then developed arguments of his Opposition to Motion to Compel Discovery.
9. In the paragraph 4 of Opposition to Motion to Compel Discovery, Registrant deliberately makes a false submission to the TTAB that "Petitioner has concocted a complex mailing and service scheme utilizing the limitations of Federal Express as a means to do so." This is a deliberate falsehood unsupported by any evidence.
10. Further, in paragraph 4, Registrant makes a deliberately false submission to the TTAB that: "Petitioner refers to a set of documents that Petitioner never served. See Petitioner's Motion to

Compel, TTAB Case File Nos. 32-34 at 173-179. Notably, this set of documents is different from the documents that Petitioner originally filed with the Board as its "initial disclosures." Registrant is well aware that he was served with Petitioner's initial disclosures together with Declaration of Andrey Pinsky of December 29, 2011, that was attached as Exhibit 1 to Petitioner's initial disclosures. Registrant is well aware that Petitioner filed with the TTAB only his Declaration as the most important part of his initial disclosures that consisted *inter alia* of evidence of the date of first use of Petitioner's trademark in commerce and affidavits and declarations of sixteen (16) United States trademark and patent attorneys in support of Petitioner's Petition to Cancel Registrant's registration. Registrant false submissions to the TTAB are the part of the same ploy he started when he falsely claimed that he was not served with Petitioner's initial disclosures on January 6, 2011. In fact, FedEx delivered to Registrant Petitioner's initial disclosures on December 31, 2011. However, Registrant did not call to Petitioner and did not falsely claim that did not receive Petitioner's initial disclosures until January 5, 2012. The conversation between Registrant and Petitioner took place on the following day of January 6, 2012. Registrant falsely alleged that did not receive Petitioner's initial disclosures. Petitioner promised to serve initial disclosures second time. When Petitioner served his initial disclosures on Registrant second time on January 6, 2012, Registrant on January 9, 2012, refused to accept FedEx delivery of the Petitioner service. After that date, Registrant ceased all communication with Petitioner until February 15, 2012, when without any warning he filed his Motion for Default Judgement.

11. In the paragraph 5 of Opposition to Motion to Compel Discovery, Registrant deliberately makes a false submission to the TTAB that "Petitioner appears to have falsified a certificate of service of same, despite that Petitioner never served such initial disclosures. See Petitioner's Motion to Compel, TTAB Case File Nos. 32-34 at 179." This is a deliberate falsehood unsupported by any evidence.

12. In the paragraph 6 of his Opposition to Motion to Compel Discovery, Registrant deliberately makes a false submission to the TTAB that Petitioner filed his Motion to Compel Discovery on February 15, 2012. Petitioner filed his Motion to Compel Discovery on February 17, 2012.
13. On November 29, 2011, during the Discovery Conference, Registrant and Petitioner agreed to expend initial disclosures required by *Federal Rule of Civil Procedure* 26(a) to include proof of the first date of use of our trademarks in commerce. As was stated in the Discovery Conference Summary released on December 1, 2011, "this stipulation is intended to save both parties time and money but does not replace or prevent discovery on the issue of first use if either party believes it necessary."
14. In the paragraph 8 of his Opposition to Motion to Compel Discovery, Registrant states: "Registrant believes it to be in the best interest of the Board and the parties, in the spirit of judicial economy, to respond to petitioner's discovery requests at this time without waving any objection thereto at a future time. As such, Registrant has as of the date of this Opposition, served Petitioner with Registrant's Responses to petitioner's Document Requests."
15. This is an empty and meritless rhetoric.
16. Registrant's Initial Disclosures are attached as **Exhibit 2**. Registrant's First Supplementary Disclosures along with documents produced by Registrant are attached as **Exhibit 3**. Petitioner's discovery requests are attached as **Exhibit 4**. Registrant's Responses to Petitioner's discovery requests are attached as **Exhibit 5**.
17. Registrant's Initial Disclosures (**Exhibit 2**) are boilerplate, useless disclosures that only provided a publicly available certificate of registration of Registrant's trademark KONCEPT. Registrant's Initial Disclosures in no way complied with the agreement reached by the parties during the Discovery Conference on November 29, 2011, to provide expanded initial disclosures and to provide proof of the date of first use of their trademarks in commerce.

Registrant's Initial Disclosures also did not comply with the TTAB order dated December 1, 2011.

18. Registrant's First Supplementary Disclosures (**Exhibit 3**) are perfunctory and useless disclosures that provided fifty-four (54) pages of documents that almost entirely consist of email correspondence exchanged between Registrant and Petitioner immediately before and immediately after the service of the Petition to Cancel. None of these documents provide evidence of first date of use of Registrant's trademark KONCEPT in commerce. None of these documents provide evidence in support of Registrant's affirmative defences to the Petition to Cancel. This is just another Registrant's cynical attempt to stonewall Petitioner's discovery requests by serving Petitioner with copies of the emails Petitioner himself already has on file.
19. Registrant's responses to Petitioner's Discovery Requests (**Exhibit 5**) are boilerplate, generic refusals to produce any and all documents in support of Registrant's defences to Petitioner's Petition to Cancel. The Registrant's refusals have numerous spelling mistakes that are evidence that Registrant cut and pasted his refusals without a second thought.
20. Notably, Registrant, refused to produce even the file for the trademark application KONCEPT. Registrant stated that this information is privileged. While lawyer's opinion about registrability of a trademark may be in certain circumstances privileged, the contents of a trademark application file, in general, and trademark searches made prior to selecting the trademark and prior to filing of an application for registration, in particular, are not privileged and are discoverable. See *Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged).
21. Registrant in the three months starting from the opening of the discovery period on January 1, 2012, produced no relevant documents whatsoever. Registrant's strategy in this cancellation

proceeding at this point is: (1) to waste as much discovery time as possible; (2) to file a barrage of meritless procedural motions; and (3) to stonewall Petitioner's discovery requests and to refuse production of any and all relevant documents. This strategy makes mockery of the discovery process and completely relies on interlocutory attorney Dunn's willful blindness to Registrant deceitful and dilatory conduct.

22. The TTAB's Manual of Procedure Third Edition in paragraph 406.01 as far as the duty to cooperate is concerned states: "The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not. Each party and its attorney or other authorized representative has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. Discovery before the Board is not governed by the concept of priority of discovery - that is, a party is not relieved of its discovery obligations, including its duty to cooperate, in spite of the fact that an adverse party wrongfully may have failed to fulfill its own obligations."

March 23, 2012

A handwritten signature in black ink that reads "Andrey Pinsky". The signature is written in a cursive, flowing style.

Andrey Pinsky

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

ANDREY PINSKY,

Petitioner,

v.

DOUGLAS BURDA

Registrant.

Cancellation No. 92054551

THIS IS EXHIBIT "1" TO THE DECLARATION OF
ANDREY PINSKY OF TORONTO, ONTARIO, DATED MARCH 23, 2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY

Petitioner,

v.

Cancellation No. 92054551

DOUGLAS BURDA

Respondent.

**REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION TO COMPEL
REGISTRANT TO COMPLY WITH DISCOVERY REQUESTS**

1 Respondent, Douglas Burda (Registrant) hereby requests that the Trademark Trial and Appeal Board (the Board) deny Petitioner's Motion to Compel Registrant to Comply with Discovery Requests.

2 REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION TO COMPEL REGISTRANT TO COMPLY WITH DISCOVERY REQUESTS (Opposition) is supported by Registrant's BRIEF IN SUPPORT OF OPPOSITION, below, the papers on file with the Board in this matter, and any other matters properly before the Board.

BRIEF IN SUPPORT OF OPPOSITION

I. BACKGROUND & ARGUMENT.

3 Petitioner's well-documented pattern of transgression of the rules applicable to Petitioner and the Board's orders, including with respect to Petitioner's obligations prior to the time that Petitioner may lodge discovery requests and the myriad of Petitioner's misrepresentations and falsifications on record with the Board regarding same, firmly

establishes that Petitioner's inappropriate discovery requests are ill-timed and inadequate at best, and do not require Registrant's response until such time that Petitioner decides to follow the rules and the Board's orders.

4 For example, Petitioner has concocted a complex mailing and service scheme utilizing the limitations of Federal Express as a means of doing so., the details of which Registrant is not privy to. Recently, Petitioner attempted to deflect fault for Petitioner's non-compliance with the rules onto Petitioner's perceived limitations of the Federal Express delivery system. On December 30, 2011, Petitioner filed and served its "Declaration of Andrey Pinsky", claiming same to be its initial disclosures. Now, Petitioner has realized that Petitioner never served its initial disclosures but did serve document requests.¹ As a means of whitewashing Petitioner's actions, Petitioner has claimed that Petitioner served its initial disclosures. In support of same, Petitioner refers to a set of documents that Petitioner never served. See Petitioner's Motion to Compel, TTAB Case File Nos. 32-34 at 173-179. Notably, this set of documents is different from the document that Petitioner originally filed with the Board as its "initial disclosures." *Compare* Petitioner's Initial Disclosures, TTAB Case File No. 18 with Petitioner's Motion to Compel, TTAB Case File Nos. 32-34 at 173-179.

5 In response to Registrant's request to Petitioner for proper service of Petitioner's initial disclosures (and that Registrant was not obligated to answer discovery requests until Petitioner served its initial disclosures), Petitioner appears to have falsified a certificate of service of same, despite that Petitioner never served such initial disclosures. See Petitioner's Motion to Compel, TTAB Case File Nos. 32-34 at 179.

¹ Of course, Registrant is not obligated to respond to Petitioner's discovery requests until Petitioner serves Petitioner's initial disclosures on Registrant.

Registrant believes that Petitioner has unnecessarily elaborated on the limitations of the Federal Express delivery system at many times in the past, specifically so that Petitioner can rely on such a position presently, despite Petitioner's improper actions like those above.

6 On the basis of Petitioner's numerous transgressions (including without limitation those detailed above), Registrant filed its Motion for Default Judgment against Petitioner on February 15, 2012. On the same day, Petitioner filed its Motion to Compel. On March 9, 2012, Registrant filed its Motion to Suspend the Proceeding and for an Extension of Time to Respond to Petitioner's Motion to Compel on the basis that this response would be unnecessary if Registrant's Motion for Default were granted.

7 Unfortunately, Registrant's deadline to respond to Petitioner's Motion to Compel has arrived prior the Board's ruling on Registrant's Motion for Default and Registrant's Motion to Suspend the Proceeding and for an Extension of Time to Respond to Petitioner's Motion to Compel. As such, this Opposition is necessitated only by the timing of the developments in this proceeding, requiring that Registrant submit such responses or face an order to compel such responses, despite the unfounded nature of Petitioner's Motion to Compel and that Registrant believes no response to Petitioner's discovery requests is necessary until Petitioner actually serves its initial disclosures.

8 However, Registrant believes it to be in the best interest of the Board and the parties, in the spirit of judicial economy, to respond to Petitioner's discovery requests at this time without waiving any objection thereto at a future time. As such, Registrant has, as of the date of this Opposition, served Petitioner with Registrant's Responses to Petitioner's Document Requests. See Certificate of Service of same attached hereto as

Exhibit 1. Registrant would respectfully reserve Registrant's rights to supplement and/or withdraw all or part of Registrant's Opposition and Registrant's Responses to Petitioner's Discovery Requests based upon the Board's treatment of matters presently pending.

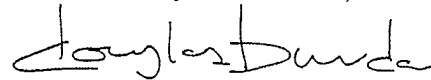
II. CONCLUSION.

9 For all of the forgoing reasons, Registrant respectfully requests that the Board deny Petitioner's Motion to Compel.

10 Registrant respectfully reserves the right to file additional papers with the Board regarding Petitioner's Motion to Compel.

March 16, 2012

Respectfully submitted,



Douglas Burda
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Las Vegas, Nevada 89101
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Email. dbb@konceptlaw.com
Attorney & Registrant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY

Petitioner,

v.

Cancellation No. 92054551

DOUGLAS BURDA

Respondent.

EXHIBIT 1 TO REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION TO
COMPEL REGISTRANT TO COMPLY WITH DISCOVERY REQUESTS

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S RESPONSES TO PETITIONER'S DOCUMENT REQUESTS has been served on Andrey Pinsky by mailing said copy on March 16, 2011 via First Class Mail International, postage prepaid to:

ANDREY PINSKY
PINSKY LAW
45 SHEPPARD AVE EAST SUITE 900
TORONTO, ON M2N 5W9
CANADA

By: 
Douglas Burda

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

ANDREY PINSKY,

Petitioner,

v.

DOUGLAS BURDA

Registrant.

Cancellation No. 92054551

THIS IS EXHIBIT "2" TO THE DECLARATION OF
ANDREY PINSKY OF TORONTO, ONTARIO, DATED MARCH 23, 2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY

Petitioner,

v.

Cancellation No. 92054551

DOUGLAS BURDA

Respondent.

REGISTRANT'S FIRST SUPPLEMENTAL DISCLOSURES

Respondent, Douglas Burda (Registrant), recognizing that the obligation of the parties to a cancellation proceeding to supplement initial disclosures is integral to the efficient conduct of Trademark Trial and Appeal Board (Board) proceedings, makes the following supplemental initial disclosures pursuant to the applicable rules of practice before the Board. This document incorporates all prior disclosures made by Registrant, with the exception of any amendments to such disclosures.

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION.

- A. Mr. Douglas Burda, Esq.
900 Las Vegas Boulevard South, Unit 1009
Las Vegas, Nevada 89101
USA
(248) 217-0002

Registrant anticipates that Mr. Burda has discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter including without limitation information relevant to the disputed facts in this matter.

- B. Mr. Andrey Pinsky, also known as Mr. Anndrey Pinsky
 45 Sheppard Avenue East, Suite 900
 Toronto, Ontario M2N 5W9
 Canada
 (416) 221-2600

Registrant anticipates that Mr. Pinsky has discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter including without limitation information relevant to the disputed facts in this matter.

- C. Each individual identified in Petitioner's declaration(s)

Registrant anticipates that these individuals will have discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter.

- D. Mr. Richard H. Newman
 Wells Fargo Tower, Suite 1400
 3800 Howard Hughes Parkway
 Las Vegas, NV 89169-5980
 (702) 667-4811

Registrant anticipates that Mr. Newman has discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter including without limitation information relevant to the disputed facts in this matter.

- E. Mr. Scott Smiley
 200 South Andrews Avenue, Suite 100
 Fort Lauderdale, Florida 33301
 (754) 300-1500

Registrant anticipates that Mr. Newman has discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter including without limitation information relevant to the disputed facts in this matter.

II. LISTING AND DESCRIPTION OF CATEGORIES OF DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS.

The items attached hereto, which are within the possession or control of Registrant, may be relevant to the disputed factual issues, including proof of date of first use in commerce of the mark KONCEPT:

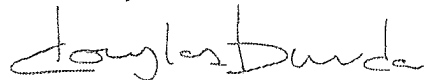
- A. Correspondence between the parties;
- B. Documents detailing Petitioner's offerings under Petitioner's alleged CONCEPT LAW trademark;
- C. Documents detailing Registrant's attorney status;
- D. Records regarding Registrant's domain name;
- E. Records regarding Registrant's logo;
- F. Specimens of use of Registrant's KONCEPT trademark;
- G. Website source files.

III. DUTY TO SUPPLEMENT.

Registrant reserves the right to supplement these initial disclosures as discovery continues. These initial disclosures are based only on currently available information within Registrant's possession, custody and control.

March 15, 2012

Sincerely,



Douglas Burda
KONCEPT® LLC
900 Las Vegas Boulevard South
Unit 1009
Las Vegas, Nevada 89101
Phone. (248) 217-0002
Email. dbb@konceptlaw.com
Attorney & Registrant

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S FIRST SUPPLEMENTAL DISCLOSURES has been served on Andrey Pinsky by mailing said copy on March 15, 2011 via First Class Mail International, postage prepaid to:

ANDREY PINSKY
PINSKY LAW
45 SHEPPARD AVE EAST SUITE 900
TORONTO, ON M2N 5W9
CANADA

By: 
Douglas Burda

Subject: FW: Concept Law (TM) Newsletter

Date: Friday, September 30, 2011 7:33:11 AM Pacific Daylight Time

From: Scott Smiley

To: Douglas Burda (dbb@konceptlaw.com)

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By the way, this was forwarded to me by a colleague.

-----Original Message-----

From: Concept Law (TM) Newsletter [<mailto:newsletter@pinskylaw.ca>]

Sent: Monday, September 26, 2011 3:22 PM

To: Pinsky Law (Newsletter)

Subject: Concept Law (TM) Newsletter

Good Morning:

Please find attached Volume 2011, September Issue of the Concept Law (TM) Newsletter. The Concept Law (TM) Newsletter provides timely reports and commentary on developments in Canadian business, technology and intellectual property law.

Let us know if you do not want to receive this newsletter, and we will remove you from the list of the recipients.

Pinsky Law
www.pinskylaw.ca

DISCLAIMER - Please note that the information provided in the Concept Law (TM) Newsletter is of general nature and may not apply to any specific or particular situation. It is not to be considered as a legal advice nor presumed to be indefinitely up to date.

Subject: Re: Service Logistics

Date: Thursday, October 20, 2011 12:47:37 PM Pacific Daylight Time

From: Pinsky Law

To: Douglas Burda

AUTOMATICALLY GENERATED EMAIL.

September 29, 2011

Douglas Burda
Unit 1009
900 Las Vegas Boulevard South
Las Vegas, Nevada 89101
United States of America

Dear Mr. Burda:

Please note that the delivery of your email to Pinsky Law has failed. We are unable to receive your email correspondence. In the past, I repeatedly requested you to communicate with this office by fax only to the number (416) 221-2640. Since you persistently refused to communicate with this office by fax, we took measures to protect our legal interest. Please forward all future correspondence by fax only to the number (416) 221-2640.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Pinsky Law

Sent: Thursday, October 20, 2011 2:23 PM

Subject: Service Logistics

Mr. Pinsky,

Please express your agreement to service by email in the matter regarding my KONCEPT mark. Otherwise, we will need to employ an international courier for service of all papers which is obviously inefficient and relatively expensive when compared with service via email.

I've already indicated that we do not have a facsimile machine, and you and I have already had extensive communication via email regarding this matter. Any additional costs we take on that are associated with your unfounded resistance to service via email will be accounted for in our damages calculation for which we will seek full compensation from you. Of course, your agreement to service via email will make this relatively mundane aspect of the matter much easier for all involved parties (including the USPTO).

Your response is required before 5:00 p.m. Pacific time, today.

Sincerely,
Douglas Burda

Subject: FW: Schedule of Fees Canada 2012

Date: Tuesday, November 1, 2011 9:16:53 AM Pacific Daylight Time

From: Newman, Richard H.

To: Douglas Burda

FYI

-----Original Message-----

From: Concept Law (TM) Newsletter [<mailto:newsletter@pinskylaw.ca>]

Sent: Monday, October 31, 2011 6:28 AM

To: Pinsky Law (Newsletter)

Subject: Schedule of Fees Canada 2012

Good day,

Please find attached schedule of Canadian patent, trademark, and copyright filing and prosecution fees for the year 2012.

Pinsky Law

www.pinskylaw.ca

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Subject: Re: Discovery Conference

Date: Thursday, November 3, 2011 10:22:18 AM Pacific Daylight Time

From: Andrey Pinsky (Pinsky Law)

To: Douglas Burda

30

Mr. Burda,

1. You should not assume anything in life in general and in these proceedings in particular. I advised you that you would be communicating with me (and serving your documents) in a hard copy. Since you are unable (or not willing) to get a fax software to receive faxes, you leave mail as the only option for communication. I contacted you via email on an exceptional basis because we only have 10 days to schedule the Discovery Conference with participation of a Board Member. My mail would not reach you and your reply would not come back to me in these 10 days. All your correspondence to me after the Discovery Conference is scheduled must be in a hard copy.

2. Do not contact the Board behind my back without copying your correspondence to me. I consider contacts of the Board without copying correspondence to me to be a breach of Rules of Professional conduct and I will act accordingly. All your correspondence with the Board must be in writing and you must copy your correspondence to me.

3. You did not provide me with dates and times of your preference for the Discovery Conference. Please provide dates and times at which you are available for the conference in order to select a mutually convenient date and time.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Andrey Pinsky (Pinsky Law)

Sent: Wednesday, November 02, 2011 6:11 PM

Subject: Re: Discovery Conference

Mr. Pinsky,

This email is sent on the assumption that communication via email is now acceptable to you. Please confirm your agreement to service of documents via email as well.

Regarding your dilatory request and message below, please note that I already requested via telephone, prior to your request, the presence of the Board at the Conference.

Further, I've been informed that Ms. Dunn has only recently returned to her office after being out on sick leave, so I would recommend that we accommodate Ms. Dunn's preferences on this matter, rather than your own.

Obviously, the Board's scheduling constraints take priority over our own, so it will be far more efficient for us to discuss our own availability after we are aware of the Board's. As such, after Ms. Dunn communicates the Board's availability, we will be in touch regarding same.

Note that the deadline for the Conference is December 2, 2011.

Sincerely,

k ncept

douglas

burda

On 11/1/11 1:54 PM, "Andrey Pinsky (Pinsky Law)" <andrey@pinskylaw.ca> wrote:

Mr. Burda,

I filed a request for a Board Member participation in the mandatory Discovery Conference. A copy of the request is attached. Please provide dates and times at which you are available for the conference in order to select a mutually convenient date and time.

Yours truly
Andrey Pinsky

Tel: (416) 221-2600
Fax: (416) 221-2640
www.pinskylaw.ca
900 - 45 Sheppard Ave. East
Toronto, ON, M2N 5W9
Canada

CONFIDENTIALITY NOTICE:

The contents of this e-mail message are confidential and strictly reserved for the sole use of Pinsky Law and the recipient(s) indicated in the message. This message may contain information protected by the solicitor-client privilege. If you received this message in error, please notify Pinsky Law immediately and delete the original message as well as all copies. Any disclosure, copying, distribution or reliance on the contents of the information is strictly prohibited. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

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Subject: Intellectual Property

Date: Thursday, September 22, 2011 2:52:00 PM Pacific Daylight Time

From: Anndrey Pinsky

To: dbb@konceptlaw.com

Your Name: Anndrey Pinsky

Your Email: contact@pinskylaw.ca

Your Telephone: (416) 221-2600

Your URL (YourURL.com): www.pinskylaw.ca

Your Twitter URL (twitter.com/yourtwitterURL):

Preferred contact method: Email

Subject: Intellectual Property

Communication: Good day Mr. Burda. I am commencing trademark cancellation proceedings in respect of your trademark KONCEPT. I have to serve you with my Petition to Cancel. Unfortunately, you do not provide a physical address of your law office on your website. You also do not provide a fax number of your law office. This lack of physical address of your law office and lack of fax number precludes me from serving you with my Petition to Cancel and violates a number rules of the Nevada Bar Rules of Professional Conduct. Please provide me with your law office physical address, email, and fax number through which you permit me to serve you with my Petition to Cancel your trademark. Please provide this information not later than 14:00 on September 23, 2011. If I am not in receipt of this information by 14:00 on September 23, 2011, I will file a formal complaint with the Nevada Bar. I will be stating my inability to properly serve you with my Petition to Cancel as one of the grounds of my complaint, and I will be seeking from the Bar, inter alia, assistance to serve you with my Petition to Cancel. I sincerely hope that this will not be necessary and that you will provide me with an opportunity to properly serve you with my Petition to Cancel your trademark. Yours truly, Andrey Pinsky

June 15, 2011

SENT BY EMAIL TO: TRADEMARKASSISTANCECENTER@USPTO.GOV
AND BY MAIL TO:

Caryn Glasser
Trademark Assistance Center
P.O. Box 15533 Madison East,
Concourse Level Room C 55
600 Dulany Street
Alexandria, VA 22314
USA

Dear Ms. Glasser

Re: Trademark "Koncept" USPTO file # 85176628

Please find enclosed letter to Mr. Douglas Burda concerning the abovementioned trademark application.

Yours very truly,

Andrey Pinsky

June 15, 2011

SENT BY EMAIL TO: HELLO@KONCEPTLAW.COM
DOUGLAS.BURDA@GMAIL.COM
TRADEMARKASSISTANCECENTER@USPTO.GOV

Douglas Burda
Koncept Innovative Law
P.O. Box 15533
Las Vegas, Nevada 89114
USA

Dear Mr. Burda

Re: Trademark "Koncept" USPTO file # 85176628

My name is Andrey Pinsky, I am the principal of Pinsky Law, a Canadian intellectual property law firm. As you are aware, CONCEPT LAWTM is trademark under which Pinsky Law distributes its intellectual property services for a number of years. My attention has been directed to your law firm's recent adoption of the trademark and trade name "Koncept Innovative Law" for a very similar legal services promoted and distributed in the same commercial channels.

Pinsky Law adopted the trademark CONCEPT LAWTM in 2007, not only in Canada and the United States but also internationally, and has been promoting its intellectual property services continuously since then. Pinsky Law has extensively promoted its CONCEPT LAWTM services to intellectual property practitioners in Canada, the United States, and internationally through brochures and monthly newsletters and has developed a valuable goodwill in the trademark since its adoption. Pinsky Law CONCEPT LAWTM newsletter has been delivered to thousands of intellectual property professionals in Canada, the United States, and internationally on a monthly basis. As a result, CONCEPT LAWTM has become a well-known trademark for intellectual property services.

Pinsky Law does not have a United States trademark registration for CONCEPT LAWTM, but it claims common law rights inuring to it from its long-standing use of that trademark. Trademark rights in the United States arise from use, not mere registration. I sincerely believe that the name "Koncept Innovative Law" and sale of intellectual property legal services under this name may mislead potential clients and intellectual property professionals into believing that your law firm services originate with Pinsky Law or that they are approved, sponsored, or supplied by Pinsky Law. I feel strongly that there is a high likelihood of confusion in the market place between Pinsky Law intellectual property services distributed under the trademark CONCEPT LAWTM and intellectual property services distributed under the name "Koncept Innovative Law". I believe that you are no more eager to suffer such confusion than Pinsky Law is. Accordingly, I ask that before your fledgling services get off the ground under the name "Koncept Innovative Law", you consider adopting another

name and another trademark that could not create any confusion with Pinsky Law long-standing trademark CONCEPT LAWTM.

My attention has also been directed to the fact that you filed trademark application for registration of the trademark "Koncept" on the principal register of the United States Patent and Trademark Office (USPTO). The trademark application (#85176628) was filed on November 15, 2010, and is still alive. You claimed June 12, 2010, as the date of first use of the trademark "Koncept". A simple Internet search for words "concept law" would have revealed to you that on both of those dates CONCEPT LAWTM was a trademark used by Pinsky Law to distribute its legal services. I can discern no legitimate commercial justification for your use and registration of the trademark "Koncept" other than to profit from Pinsky Law extensive advertising of the trademark CONCEPT LAWTM and the invaluable goodwill generated by it. Your actions are indefensible, as the numerous federal cases demonstrate. I am asking you to voluntarily abandon your trademark application with the USPTO for the trademark "Koncept". I am asking you to abandon your trademark application in order to avoid expenses that will arise from expungement proceedings I will have to commence to cancel registration of the trademark "Koncept".

If you believe that I am mistaken in my conviction that there inevitably will be confusion between CONCEPT LAWTM trademark and "Koncept" trademark, I welcome your written comments. However, if I have persuaded you that there may be substantial confusion, it stands to reason that as the junior adopter, you might consider renaming your law firm and the trademark it uses to distribute its services. I look forward to receiving your written reply at your earliest convenience.

Yours very truly,

Andrey Pinsky

Copy to: Caryn Glasser United States Patent and Trademark Office by email and mail

Subject: Re: Intellectual Property

Date: Thursday, September 22, 2011 4:51:04 PM Pacific Daylight Time

From: Pinsky Law

To: Douglas Burda

Mr. Burda,

I repeat, I am not interested in a discussion or a settlement. I am interested in a cancellation of your registration. Accordingly, I am the last time asking you for a fax number and physical address of your law firm in order to serve you with my Petition to Cancel. If you again refuse to provide them, I will proceed through a complaint with the Nevada Bar as I indicated in my original email to you. Please do not make it more painful and complicated than it should be.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Pinsky Law

Sent: Thursday, September 22, 2011 8:35 PM

Subject: Re: Intellectual Property

Mr. Pinsky:

You misinterpret my use of the word "settle".

Final offer: contact me immediately regarding this matter.

Sincerely,
Douglas Burda

From: Pinsky Law <contact@pinskylaw.ca>

Date: Thu, 22 Sep 2011 20:25:19 -0400

To: Douglas Burda <dbb@konceptlaw.com>

Subject: Re: Intellectual Property

Mr. Burda,

Thank you for your reply. I am not interested in a settlement. I am seeking a cancellation of your trademark registration. Please provide me with a fax number to serve you with my Petition to Cancel.

Thank you

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Anndrey Pinsky

Sent: Thursday, September 22, 2011 8:15 PM

Subject: Re: Intellectual Property

Mr. Pinsky:

Please contact me immediately by telephone. I believe we can settle this matter easier than you seem to think

Sincerely,
Douglas Burda
Koncept
(248) 217-0002

From: Anndrey Pinsky <contact@pinskylaw.ca>

Reply-To: Anndrey Pinsky <contact@pinskylaw.ca>

Date: Thu, 22 Sep 2011 17:52:00 -0500

To: Douglas Burda <dbb@konceptlaw.com>

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Subject: Intellectual Property

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Your Name: Anndrey Pinsky

Your Email: contact@pinskylaw.ca

Your Telephone: (416) 221-2600

Your URL (YourURL.com): www.pinskylaw.ca

Your Twitter URL (twitter.com/yourtwitterURL):

Preferred contact method: Email

Subject: Intellectual Property

Communication: Good day Mr. Burda, I am commencing trademark cancellation proceedings in respect of your trademark KONCEPT. I have to serve you with my Petition to Cancel. Unfortunately, you do not provide a physical address of your law office on your website. You also do not provide a fax number of your law office. This lack of physical address of your law office and lack of fax number precludes me from serving you with my Petition to Cancel and violates a number rules of the Nevada Bar Rules of Professional Conduct. Please provide me with your law office physical address, email, and fax number through which you permit me to serve you with my Petition to Cancel your trademark. Please provide this information not later than 14:00 on September 23, 2011. If I am not in receipt of this information by 14:00 on September 23, 2011, I will file a formal complaint with the Nevada Bar. I will be stating my inability to properly serve you with my Petition to Cancel as one of the grounds of my complaint, and I will be seeking from the Bar, inter alia, assistance to serve you with my Petition to Cancel. I sincerely hope that this will not be necessary and that you will provide me with an opportunity to properly serve you with my Petition to Cancel your trademark. Yours truly, Andrey Pinsky

Subject: FW: Newsletter

Date: Wednesday, September 28, 2011 1:34:55 PM Pacific Daylight Time

From: Newman, Richard H.

To: Douglas Burda

FYI

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-----Original Message-----

From: Pinsky Law (Newsletter) [<mailto:newsletter@pinskylaw.ca>]

Sent: Saturday, June 04, 2011 12:36 PM

To: Pinsky Law (Newsletter)

Subject: Newsletter

Good Day:

Please find attached Volume 2011, June Issue of the Concept Law (TM) Newsletter.

The Concept Law (TM) Newsletter provides timely reports and commentary on developments in Canadian business, technology and intellectual property law.

Let us know if you do not want to receive this newsletter, and we will remove you from the list of the recipients.

Yours truly,

Andrey Pinsky

www.pinskylaw.ca

DISCLAIMER - Please note that the information provided in the Concept Law (TM) Newsletter is of general nature and may not apply to any specific or particular situation. It is not to be considered as a legal advice nor presumed to be indefinitely up to date

Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

Date: Thursday, September 29, 2011 10:57:49 AM Pacific Daylight Time

From: Pinsky Law

To: Douglas Burda

AUTOMATICALLY GENERATED EMAIL

September 29, 2011

Douglas Burda
Unit 1009
900 Las Vegas Boulevard South
Las Vegas, Nevada 89101
United States of America

Dear Mr. Burda:

Please note that the delivery of your email to Pinsky Law has failed. We are unable to receive your email correspondence. In the past, I repeatedly requested you to communicate with this office by fax only to the number (+16) 221-2640. Since you persistently refused to communicate with this office by fax, we took measures to protect our legal interest. Please forward all future correspondence by fax only to the number (+16) 221-2640.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Pinsky Law

Sent: Thursday, September 29, 2011 1:39 PM

Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

Mr. Pinsky:

As I already stated, we don't utilize a fax machine in my office and there is no requirement of same. The rules specifically exclude facsimile as an effective means of service. On the other hand, the Trademark Office specifically recognizes service of papers via email as effective if the parties agree, so I'm not understanding your position. It seems that you are disagreeing only for the purpose of creating roadblocks to resolution. Please confirm.

Likewise, my attempts at communication via email and telephone were in furtherance of resolution without the need to resort to utilizing the Trademark Office's valuable resources any further. Again, you have refused to respond to such communications except with messages denoting a clear desire to impede resolution.

As you alluded to before, this does not have to be as painful as you are making it. In any case, given your response to my last email, your receipt of my previous attachment is confirmed.

Sincerely,

k ncept

douglas

From: Pinsky Law <contact@pinskylaw.ca>

Date: Thu, 29 Sep 2011 10:57:04 -0400

To: Douglas Burda <dbb@konceptlaw.com>

Subject: Re: KONCEPT™ Trademark - United States Registration Number 3981394

Mr. Burda

Your consent to service with my Petition to Cancel via email was requested on September 23, 2011, and was expected not later than the following day. Giving your consent to service via email today, after I served you with my Petition to Cancel via FedEx, is preposterous. I do not consent to communication and service of documents via email. To ensure proper record, I require communication and service via fax. Please provide your fax number. My fax number is (416) 221-2640. Since you appear to have difficulty to comprehend my messages first time around, I repeat - you have to communicate with me via fax only. Your communications via email and phone will not receive my reply.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Pinsky Law

Sent: Wednesday, September 28, 2011 7:59 PM

Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

Mr. Pinsky:

I consent to service of your Petition to Cancel via email to the email address you specified. Please specify the email address to which I should direct all papers in TTAB Cancellation Proceeding Number 92054551. Please also confirm your agreement that all such papers may be served via electronic transmission to such email address.

Sincerely,

koncept llc

douglas

From: Pinsky Law <contact@pinskylaw.ca>

Date: Fri, 23 Sep 2011 08:58:58 -0400

To: Douglas Burda <dbb@konceptlaw.com>

Cc: Pinsky Law <contact@pinskylaw.ca>

Subject: Re: KONCEPT™ Trademark - United States Registration Number 3981394

Mr. Burda,

I am asking you to confirm that I can serve you with my Petition to Cancel by forwarding it via FedEx to:

Douglas Burda
Unit 1009
900 Las Vegas Boulevard South
Las Vegas, Nevada 89161
USA

I am also requesting your written consent to serve you with my Petition to Cancel via the email address dbb@konceptlaw.com.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Pinsky Law

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Sent: Thursday, September 22, 2011 11:07 PM
Subject: KONCEPT® Trademark - United States Registration Number 3981394

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Mr. Pinsky:

We are in receipt of a message sent by you through our website. I will reserve comment regarding whether such message was sent in accordance with the Terms of Use, to which you necessarily must have read and agreed so as to utilize our website and any message-sending functionality thereon.

Further, as you well know, your allegations regarding the Nevada Rules of Professional Conduct are baseless. Any complaint to the Nevada Bar will be reciprocated on a number of levels.

In any case, we believe the issues you purport to raise are without merit. Upon your filing of any cancellation proceeding involving our mark, we will contemplate a civil action against you in the federal courts of the United States of America as we believe that your threats are made fraudulently, in bad faith and with the objective of illegitimately interfering with our business. Additionally, we believe that your actions to date are in violation of the FCRP, which we will raise, together with your other claims made in bad faith, before the USPTO and elsewhere if necessary. In addition to your latest round of messages, we see your initial salvo as providing more than enough fodder to ensure that your actions are dealt with appropriately.

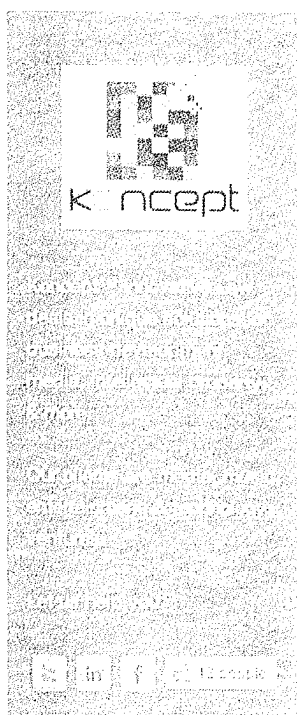
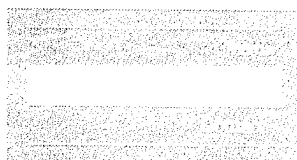
We will seek damages from you for any and all action you take regarding this matter, including without limitation for any and all attorney's fees resulting from your illegitimate actions. Nothing contained and/or omitted from this letter is intended to be or should be considered an admission of any fact or a waiver of any right or defense, all of which are expressly reserved.

Additionally, we are presently examining the applicability of The Canadian Bar Association's Code of Professional Conduct to your conduct, specifically with respect to certain rules in Chapter IX.

In any case, our office address is below which, by your own terms, settles your threat concerning the Nevada Bar complaint. We do not utilize a fax machine as it is an archaic technology. We welcome any further correspondence from you according to the applicable rules of practice.

Yours very truly,

k ncept
douglas



Koncept™ offers consultation, counseling, document & agreement formation, registrations & more with respect to music, copyrights, trademarks, internet & new media, business development, photography & graphic design.

Koncept™: Overview of Our Services

Many of the services Koncept™ offers may be classified as legal services, business services, or an unique hybrid of the two. We believe that to be effective, the lines between such classifications must necessarily be blurred. As such, the following should be seen as illustrative, and in no way restrictive, of the services we proudly offer.

Music

Copyrights

Trademarks

Internet & Media

Business

Photography & Graphic Design

Litigation

Koncept™ strives to treat each of our clients with the same high levels of respect, diligence and flexibility. As such, we are constantly expanding the range of services that we offer. In the same vein, we provide a number of different services, regardless of the businesses and individuals at almost any level of development. We are certain that you must remain innovative in this regard so as to help us offer you the best possible, effective and comprehensive manner.

Please contact us to discuss your current or upcoming projects. We look forward to growing with you.

Online - [Click here to chat](#)

ADVERTISING CANADIAN TRADEMARK FOR OPPOSITION

Where the Registrar is satisfied that a trademark application is in the proper form, that it is registrable, and that there is no co-pending application having priority, then the trademark will be advertised for opposition in the *Trade-marks Journal*. Where the Registrar is in some doubt as to whether the trademark as applied for is confusing with a previously registered trademark, she may give specific notice to the owner of that previously registered mark of the advertisement so as to allow him to oppose if he wishes. The Federal Court does not have jurisdiction to determine ownership or proper applicant in respect of a pending application – that issue is for opposition proceedings.

Once a trademark is advertised, any person may file an opposition to the registration of the trademark. There is no limitation that the opponent be a person who would be adversely affected by the outcome of the proceedings. Trademark proceedings are a matter of both public and private concern. All correspondence respecting an opposition should be clearly marked "ATTENTION OPPOSITION BOARD". Once the Statement of Opposition has been forwarded to the applicant, all correspondence must be copied to the opposite party except for the written argument, in which case only the transmittal letter is to be copied.

An opposition may be filed within two months from the date of advertisement or, if time is extended by the Registrar, then at any time up to the date of allowance to registration of the trademark upon payment of a prescribed fee. The Registrar has no obligation to extend time and, if she fails to do so, there is no decision upon which the Federal Court can act. The trademark will be registered and the potential opponent must apply to the Federal Court for expungement. The Registrar must ensure that he is fully aware of an opposition or a request for an extension of time to file an opposition which is filed before the expiry of the statutory time period, whether at a regional office or the National Capital Office. Where the Registrar has allowed an application without considering a previously filed request for an extension of time to oppose, the Registrar may withdraw the allowance at any time before the issuing of a certificate of registration and extend the time for filing a statement of opposition.

The grounds upon which an opposition may be made are that: (1) the application does not comply with the required formalities of section 30 of the *Trade-marks Act*; (2) the trademark is not registrable; (3) the applicant is not the person entitled to registration; (4) the trademark is not distinctive; (5) the applicant has no right to use the trademark. The last ground is either implied in section 30(a) or is arising under that section – the applicant, when it has alleged use of the trademark, has not in fact continuously used that mark in the normal course of trade.

The Opposition Board does not have jurisdiction to determine whether there has been a breach of an agreement between the parties as to trademarks. An opponent must ensure that the grounds of opposition are set out in sufficient detail to enable an applicant to reply. A party may apply to amend its stated grounds of opposition, and the Registrar has a discretion to allow or refuse such amendment based on judicial discretion. On appeal to the Courts, the grounds are limited to those before the Registrar.

The relevant date for consideration of the state of the register and perhaps for all purposes is the date of filing the statement of opposition, but it does not close off evidence as to what may have occurred after. While there continues to be some judicial debate on the subject, it would appear that the material date for determination of non-registrability on the ground of likelihood of confusion is the date of first use. The date upon which distinctiveness is to be determined is the date of filing of the statement of opposition. Registrability is to be decided as of the date of registration. Throughout the proceedings, all relevant circumstances should be considered so as to avoid an absurd result by applying overly technical interpretations of the *Trade-marks Act*.

Throughout the opposition proceedings, the onus rests on the applicant to satisfy the Registrar that the trademark ought to be registered. The opponent may lead evidence to prove the basis of its opposition and bears the burden of proof therein. However, the onus as to registrability remains on the applicant. A party does not need to file evidence if its arguments can be based on materials filed by the other party. The Registrar or Court may look at all the evidence filed and not only on an issue-by-issue basis. The Registrar must be reasonably satisfied, on a balance of probabilities, that registration is unlikely to cause confusion, the Registrar should not apply the "beyond a doubt criterion".

The opposition proceedings are determined by Hearing Officers, appointed for the purpose of conducting and determining oppositions who provide written reasons allowing or rejecting oppositions. An appeal lies to the Federal Court, which appeal must be commenced within two months after dispatch of the written reasons. The conduct of an opposition is governed by Regulations to the *Trade-marks Act*. In addition, the Trademarks Office publishes guidelines on procedures before the Trade-marks Opposition Board.

CONCEPT LAW™

EFFECTS OF CANADIAN PATENT REGISTRATION

Sufficiency

Subsection 27(3) of the Patent Act requires that a specification must correctly and fully describe the invention and its operation as contemplated by the inventor; set out clearly the process; in the case of a machine, explain the best mode and in the case of a process, set out clearly the relevant sequence of steps. Unlike the practice in the United States, "best mode" applies only to machines.

A patent may be attacked on the ground of insufficiency, that is, that it fails to describe the invention such that a person skilled in the art could put it into practice. For this purpose, a patent must first be construed properly. Sufficiency is considered in light of the knowledge that a skilled person would have possessed as of the relevant date, such knowledge would not include that contained in another patent issued on that same date. Sufficiency must be determined on the basis of what is disclosed in the patent and not on the basis of data outside the patent. While a court may presume that a patent describes the invention as contemplated by the inventors where there is evidence as to what the inventors actually did and contemplated, sufficiency must be considered as to whether the patent correctly and fully describes the invention as contemplated by the inventors.

Insufficiency is a separate ground from ambiguity. Insufficiency is directed to whether specification is sufficient to enable a person skilled in the art to understand how the subject matter of the patent is to be made; ambiguity is directed to the issue as to whether the scope of the monopoly can be understood. Sufficiency is a question of fact whereas ambiguity is a question of law. An allegation of insufficiency is a technical attack that should not operate to defeat a patent for a meritorious invention; such attack will succeed where a person skilled in the art could not put the invention into practice. Where the specification asserts that a certain result has been achieved with the patented invention but the underlying data demonstrates that the result, in accordance with generally accepted principles, is much less than promised, the specification lacks sufficiency and the patent is invalid. However if a patent indicates that the invention might be useful in certain matters, but makes no promise or claim in that regard, it is not insufficient.

File Wrapper Estoppel

In the United States it is common to use statements made by an applicant to the patent examiner during the course of prosecution for the purpose of limiting the scope of the patent; this concept is often called file wrapper estoppel. However, in Canada, a statement made by the agent of a patentee in the course of the prosecution of his/her application for a patent, whether in Canada or a foreign country, is inadmissible for the purpose of constructing the claims in the patent granted to him/her or limiting the ambit of the invention defined in them. The Courts has permitted file wrappers, both domestic and foreign, to be introduced and examined upon on discovery on the basis that on some occasions evidence therefrom has been

led at trial and they might lead to an inquiry as to a relevant matter. The files of patent agents relating to foreign prosecution of applications which never matured to patents have been ordered to be produced on discovery where validity and prior art were at issue. Corporate invention records submitted to in-house attorneys for evaluation as to patentability have been held to be privileged. No privilege attaches in Canada to communications with a patent agent, however, where the agent is also a lawyer, any proper privilege that a lawyer may claim is not lost simply because the lawyer may also be a patent agent. Proof must be made, however, that the lawyer is acting as a lawyer, not as an agent.

Grant and Term

Every patent is issued under the seal of the Commissioner and bears on its face the date filing of the application. Also, in the case of an application filed after October 1, 1989, each patent bears the date that the application was laid open to the public and the date the patent was issued and granted. The patentee is thereby granted, after issue, the exclusive right privilege and liberty of making, constructing, using and vending to others to be used, the invention for the term of the patent, subject to adjudication before any Court of competent jurisdiction. In addition any patentee of a patent granted upon an application filed after October 1, 1989, has the right to be paid reasonable compensation for the period between the date the patent was laid open for public inspection and the date of grant.

The term of a patent granted upon an application filed after October 1, 1989, is 20 years from the date of filing of that application in Canada. Maintenance fees must be paid annually upon every patent granted after October 1, 1989, failing which the patent will be deemed to have lapsed. A patent provides legal protection against the world, that is, others who might come into possession of it and overcomes common law alternatives, such as attempts to keep it secret or bind others by contract.

Patentee

The Patent Act provides that every patent granted grants to the patentee and the patentee legal representatives the exclusive right privilege and liberty of making constructing and using the invention and selling it to others to be used. The patent Act gives to the patentee and to all persons claiming under the patentee, a right to recover all damages sustained by reason of infringement. Persons claiming under a patentee have been judicially held to include exclusive and non-exclusive licensees as well as purchasers of patented articles. The monopoly right attached to the holding of a patent cannot be seen as having a value independent of the profits that may be deemed from the marketing of the patented invention.

EFFECTS OF CANADIAN TRADEMARK REGISTRATION

Term and Conditions

A trademark application, other than one based on proposed use, that has been examined, approved and advertised without successful opposition will be allowed and registered and a certificate issued to the applicant. An application based on proposed use will require a declaration that the trademark is in use in Canada before registration. Registration is made in the name of the applicant or, if the mark is transferred, then in the name of the transferee. Registration takes effect as of the day of its registration, and remains on the register subject to renewal every 15 years. *Prima facie* registration of a trademark is considered to be valid and gives to the registered owners the exclusive right to use the trademark as registered throughout Canada in respect of the wares or services or both in respect of which it is registered. The main purpose of the registration of a trademark is to protect the public from confusion.

A registered trademark may be expunged for non-use in proceedings in the Trademarks Office, or if held to be invalid it will be expunged from the register by the Courts. Marking the trademark when used is not required by the Trademarks Act; it has been suggested that the letter "R" within a circle or the letters "TM" within a circle would convey the same impression to the public, namely that the trademark was registered.

Right to Use

A registered trademark gives to its owner the exclusive right to the use of that trademark throughout Canada in respect of the wares or services for which it is registered, subject to any finding of invalidity. The principal advantage of registration is to extend the geographical area over which exclusive use may be exercised to the whole of Canada; however, in the case where the trademark is a distinguishing guise or is registered only because secondary meaning has been established, the Registrar may restrict the registration to certain of Canada only. There is nothing to prevent two registered trademarks from being used at the same time. Cautious variations may be made to a trademark as it is used over the years as long as the same dominant features are maintained.

Those rights conferred by registration are described as enabling rights and thus cannot afford an affirmative defence in proceedings such as those taken under the Competition Act seeking to restrain the use of a trademark; however the registration of a trademark should appear to afford a complete defence to an action for passing off or under section 7(1) of the Trademarks Act. However, the Federal Court has indicated that, in proper circumstances, where the validity of the registration is challenged, an interlocutory injunction might issue.

The owner of a registered trademark may assert as a defence in an action brought by a third party of another trademark infringement, that registration entitles him to use the mark of a third party. Such defence is, however, good only if the registration is not subsequently found to be invalid. The Courts have said that a registered owner of a trademark is *prima facie* entitled to some protection, such as an interlocutory injunction.

Concurrent Use by Third Parties

An occasion may arise where, after a trademark has been registered, it is discovered that a third party has been using or making known a confusing trademark for some time prior to the registered owner.

Where the registration of the trademark has been for less than five years, the prior user or person making known the trademark may bring proceedings to expunge the registration with the onus that he must prove that he has not abandoned his use or making known. Where the registration of the trademark has subsisted for more than five years, that registration cannot be expunged on the basis of prior use or making known, by a third party unless it can be shown that the person who adopted the registered trademark did so with knowledge of the prior use or making known. However, the person having the prior use or making known may apply to the Federal Court for an order that it can continue the use of the trademark, which order is discretionally and shall restrict the use to a defined territory and may impose other terms so as to distinguish that trademark from the other.

Protection of Goodwill

When a trademark is registered no third party may use that trademark in such a way as to depreciate the value of the goodwill attached thereto. There can be no action for depreciation of goodwill of an registered trademark, at least not in the Federal Court under the provisions of the Trademark Act. Nothing in Section 22 requires a demonstration that use of both trademarks in the same geographic area would lead to confusion. All that needs to be shown is that use has been made of a mark that is sufficiently similar such as to evoke, in the relevant group of consumers, a mental association that is likely to depreciate the value of the goodwill.

Sections 20 and 22 are two conceptually different courses of action. Section 22 requires four elements: first, that the claimant's registered trademark must be used by another in connection with wares or services, whether or not they are competitive with those of the claimant; second, that the claimant's mark be sufficiently well known so as to have goodwill attaching to it – it need not be well known within the meaning of the Trademarks Act nor famous; third, the use by another must be likely to have an effect on the goodwill; and fourth, that it is likely to depreciate the value of that goodwill.

Renewal of Registration

The registration of a trademark, if not expunged, subsists for a term of 15 years and may be renewed for a further period of 15 years at the expiry of the first 15 years and each 15 year period thereafter. Renewal may be requested by a simple letter to that effect signed by the owner or his trademark agent filed with the Trademarks Office with the appropriate fee. If such renewal has not been requested before the expiry of the then current term for registration, the Trademarks Office will send a renewal notice after expiry date. Such renewal notice will specify that the registrant has a period of six months from the date of the notice to renew the trademark. This six-month grace period is not extendable. If a trademark registration is not renewed, the Registrar must expunge the registration. Failure to renew a registration does not mean that the common law rights to a trademark are abandoned. Those rights continue as long as there is use of this trademark.

FOREIGN ASSOCIATE SCHEDULE OF FEES CANADA 2012

A. PATENTS		Government Fee US\$	Professional Fee US\$
1	Search		
	a) Patentability search for an invention and opinion letter		2,000. – 3,000.
2	Drafting		
	a) Draft a patent application for an invention (minimum)		2,500.
3	Translation		
	a) Translation of a document into English per word in English		0.25
4	Filing		
	a) File a patent application for registration		
	Small entity	200.	600.
	Large entity	400.	600.
	b) Submit documents to complete a patent application	200.	300.
	c) File a PCT national phase patent application for registration		
	Small entity	200.	600.
	Large entity	400.	600.
5	Drawings		
	a) Formal drawings, per sheet		50.
	b) When prepared by duplication, per sheet		30.
	c) Amending drawings on file (minimum)		50.
6	Amendments		
	a) Prepare and file a voluntary amendment (minimum)	400.	300.
7	Publication		
	a) Request for an early publication		300.
	b) Report a publication		150.
8	Examination		
	a) Request an examination for a patent application		
	Small entity	400.	150.
	Large entity	800.	150.
	b) Request to advance an examination for a patent application	500.	150.
9	Office Action		
	a) Report an Office Action (minimum)		150.
	b) Request an extension of time	200.	150.

The fees and procedures above are subject to change without notice.

PINSKY LAW

Intellectual Property & Technology Law

47
SUITE 900
45 SHEPPARD AVE. EAST
TORONTO, ONTARIO
CANADA M2N 5W9

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FAX: (416) 221-2640
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Registered Canadian and USA Patent & Trademark Agents

A. PATENTS		Government Fee US\$	Professional Fee US\$
c)	Draft and file a reply to an Office Action		600. – 1,800.
d)	Report a final rejection (minimum)		300.
e)	Launch a notice of appeal		Hourly rate
10	Protest (Filing Prior Art)		
a)	File a protest with prior art (minimum)		600.
b)	Reply to a protest with prior art filed by third parties		600. – 1,800.
c)	Keep watch over a protest, per annum		300.
11	Issue		
a)	Final steps of prosecution, processing details of issued patent		
	Small entity	150.	300.
	Large entity	300.	300.
12	Maintenance (Small Entity - S/E; Large Entity - L/E)		
a)	Second to fourth anniversary of filing (annually) S/E	50.	150.
	Second to fourth anniversary of filing (annually) L/E	100.	150.
b)	Fifth to ninth anniversary of filing (annually) S/E	100.	150.
	Fifth to ninth anniversary of filing (annually) L/E	200.	150.
c)	Tenth to fourteenth anniversary of filing (annually) S/E	125.	150.
	Tenth to fourteenth anniversary of filing (annually) L/E	250.	150.
d)	Fifteenth to nineteenth anniversary of filing (annually) S/E	225.	150.
	Fifteenth to nineteenth anniversary of filing (annually) L/E	450.	150.
B. TRADEMARKS		Government Fee US\$	Professional Fee US\$
13	Search		
a)	Prepare a Thomson & Thomson search and opinion letter		1,500.
b)	Basic search, per trademark, per ware or service		150.
c)	Basic search for an identical trademark, per ware or service		150.
d)	Basic search by a trademark owner		150.
e)	Basic search for a device		300.
f)	Request official printout of trademark by owner without opinion	35.	300.
14	Drafting		
a)	Draft a trademark application		600.
15	Filing		
a)	File a trademark application for registration, per ware or service, including minimum publication	300.	150.

The fees and procedures above are subject to change without notice.

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PINSKY LAW

Intellectual Property & Technology Law

Registered Canadian and USA Patent & Trademark Agents

48
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B. TRADEMARKS		Government Fee US\$	Professional Fee US\$
	b) Amendment of an application by extending wares or services	450.	600.
16	Examination		
	a) Report an Office Action and/or oppositions encountered (minimum)		150.
	b) Ascertain details on trademark invoked by an opponent or cited by the Examiner		150.
	c) Draft and file a reply to an Office Action		300. – 600.
	d) Request an extension of time	125.	150.
17	Opposition		
	a) Launch a notice of opposition	750.	Hourly rate
	b) Launch a statement of objection	1,000.	Hourly rate
	c) Request production of an affidavit of use of a trademark	400.	Hourly rate
	d) Report final outcome of opposed application (minimum)		300.
18	Registration		
	a) Registration of a trademark, including without further fee, a certificate	200.	300.
19	Issuance		
	a) Issue an additional certificate for each trademark certification	35.	150.
	b) Plus, for each additional page	1.	
20	Renewal		
	a) Application for a renewal, including minimum publication	400.	300.
C. Copyright		Government Fee US\$	Professional Fee US\$
21	Filing		
	a) File published and unpublished work	65.	300.
	b) File a certificate of correction	65.	300.
	c) File a grant of interest	65.	300.
D. Industrial Designs		Government Fee US\$	Professional Fee US\$
22	Search		

The fees and procedures above are subject to change without notice.

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a)	Industrial design registrability search for an invention and opinion letter (minimum)		300.
D. Industrial Designs		Government Fee US\$	Professional Fee US\$
23	Drafting		
a)	Draft an application for industrial design registration (minimum)		1,200.
24	Filing		
a)	File an application for industrial design registration	400.	150.
25	Classification		
a)	Draft a reply to a report with a request for more information (minimum)		300.
26	Preliminary Examination		
a)	Draft a reply to a request for clarification or an amendment restricting the application to one design (minimum)		300.
b)	Request to advance examination of an application	500.	300.
27	Office Action		
a)	Report an Office Action (minimum)		150.
b)	Request an extension of time		150.
c)	Ascertain details cited by the Examiner		150.
d)	Draft and file a reply to an Office Action		600. – 1,800.
e)	Report a final rejection (minimum)		300.
f)	Launch a notice of appeal		Hourly rate
28	Registration		
a)	Report registration, including without further fee, a certificate		150.
b)	Request a delay for registration	100.	300.
c)	Assignment of industrial design	100.	300.
29	Maintenance		
a)	Submit a maintenance after five years	350.	300.

The fees and procedures above are subject to change without notice.

Koncept.2.rws 303 KB

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50

General

Kind: RapidWeaver Sandwich
 Size: 303,202 bytes (352 KB on disk)
 Where: /Users/dbb/Documents/
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 Created: Tuesday, May 18, 2010 12:16 PM
 Modified: January 13, 2011 10:35 PM
 Label: -

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Name & Extension

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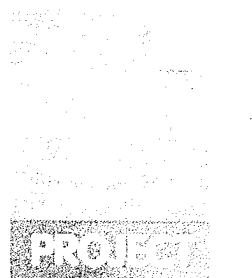
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Preview



Sharing & Permissions

You have custom access

Name	Privilege
dbb (Me)	Read & Write
stcH	Read only
everyone	Read only

Subject: Confirm your Twitter contact email, KonceptLaw

Date: Wednesday, May 12, 2010 11:09:02 AM Pacific Daylight Time

From: Twitter

To: dbb@konceptlaw.com

51



Hi, Koncept

You recently changed the email address associated with your Twitter account (@KonceptLaw). To confirm dbb@konceptlaw.com as your new contact email, click this link:

[Confirm your new email address](#)

Once you confirm, all future email from Twitter will be sent to this address.

Twitter

Subject: Trademark "Koncept", USPTO file # 85176628
Date: Wednesday, June 15, 2011 12:18:03 PM Pacific Daylight Time
From: Andrey Pinsky (Pinsky Law)
To: HELLO@KONCEPTLAW.COM
CC: DOUGLAS.BURDA@GMAIL.COM, TRADEMARKASSISTANCECENTER@USPTO.GOV

52

Dear Mr. Burda,

Please find enclosed letter to you which has been also sent to Ms. Caryn Glasser at the United States Patent and Trademark Office. Neither your website, nor the USPTO file, nor your file with the Nevada Bar Association provide your fax number. Accordingly, this letter is sent to you electronically.

Yours truly
Andrey Pinsky

Tel: (416) 221-2600
Fax: (416) 221-2640
www.pinskylaw.ca
900 - 45 Sheppard Ave. East
Toronto, ON, M2N 5W9
Canada

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Subject: FW: Concept Law (TM) Newsletter

Date: Friday, October 7, 2011 1:52:35 PM Pacific Daylight Time

From: Scott Smiley

To: Douglas Burda (dbb@konceptlaw.com)

53

Hi Doug,

I don't know if you have been monitoring, but I formally changed the name of my firm, updated my website and the FL corporate records, changed the name at the USPTO, and have deleted my Facebook and LinkedIn pages for The Concept Law Group, P.A. In the middle of all of this, I moved offices, so it's been a struggle, but I have abandoned all use of The Concept Law Group.

In the meantime, the below e-mail was forwarded to me by an attorney in my office. I thought you would like to know.

Scott

-----Original Message-----

From: Concept Law (TM) Newsletter (<mailto:newsletter@pinskylaw.ca>)

Sent: Monday, September 26, 2011 3:22 PM

To: Pinsky Law (Newsletter)

Subject: Concept Law (TM) Newsletter

Good Morning:

Please find attached Volume 2011, September Issue of the Concept Law (TM) Newsletter. The Concept Law (TM) Newsletter provides timely reports and commentary on developments in Canadian business, technology and intellectual property law.

Let us know if you do not want to receive this newsletter, and we will remove you from the list of the recipients.

Pinsky Law
www.pinskylaw.ca

DISCLAIMER - Please note that the information provided in the Concept Law (TM) Newsletter is of general nature and may not apply to any specific or particular situation. It is not to be considered as a legal advice nor presumed to be indefinitely up to date.

Subject: Re: Service Logistics

Date: Thursday, October 20, 2011 1:45:36 PM Pacific Daylight Time

From: Andrey Pinsky (Pinsky Law)

To: Douglas Burda

Mr. Burda,

You seem to be extremely slow at absorbing and processing information. I explained to you a numerous number of times (in writing) that you must communicate with me via fax and mail only. What part of this message is unclear for you?

I am the last time asking you - DO NOT communicate to me via email. If you again fail to comply with my request, I will have no choice but to seek assistance of the Nevada Bar and the USPTO in helping me to convey and explain my message to you. Since you appear to have difficulty to understand my messages, I repeat:

Your next email to me will produce a complaint to the Nevada Bar and a complaint to the USPTO.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: andrey@pinskylaw.ca

Sent: Thursday, October 20, 2011 5:29 PM

Subject: FW: Service Logistics

From: Douglas Burda <ddb@konceptlaw.com>

Date: Thu, 20 Oct 2011 11:23:50 -0700

To: Pinsky Law <contact@pinskylaw.ca>

Subject: Service Logistics

Mr. Pinsky,

Please express your agreement to service by email in the matter regarding my KONCEPT mark. Otherwise, we will need to employ an international courier for service of all papers which is obviously inefficient and relatively expensive when compared with service via email.

I've already indicated that we do not have a facsimile machine, and you and I have already had extensive communication via email regarding this matter. Any additional costs we take on that are associated with your unfounded resistance to service via email will be accounted for in our damages calculation for which we will seek full compensation from you. Of course, your agreement to service via email will make this relatively mundane aspect of the matter much easier for all involved parties (including the USPTO).

Your response is required before 5:00 p.m. Pacific time, today.

Sincerely,
Douglas Burda

Subject: Discovery Conference

Date: Tuesday, November 1, 2011 12:54:33 PM Pacific Daylight Time

From: Andrey Pinsky (Pinsky Law)

To: Douglas Burda

55

Mr. Burda,

I filed a request for a Board Member participation in the mandatory Discovery Conference. A copy of the request is attached. Please provide dates and times at which you are available for the conference in order to select a mutually convenient date and time.

Yours truly
Andrey Pinsky

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Subject: Re: Discovery Conference

Date: Monday, November 28, 2011 4:12:10 PM Pacific Standard Time

From: Andrey Pinsky (Pinsky Law)

To: Douglas Burda

AUTOMATICALLY GENERATED EMAIL

Douglas Burda
Unit 1009
900 Las Vegas Boulevard South
Las Vegas, Nevada 89101
United States of America

Dear Mr. Burda:

Please note that the delivery of your email to Pinsky Law has failed. We are unable to receive your email correspondence. In the past, I repeatedly requested you to communicate with this office by fax only to the number (416) 221-2640. Since you persistently refused to communicate with this office by fax, and refused to provide your fax number, we took measures to protect our legal interest. Please forward all future correspondence by fax only to the number (416) 221-2640. If you wish to receive a reply to your correspondence, you must provide your fax number.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: andrey@pinskylaw.ca

Sent: Monday, November 28, 2011 7:00 PM

Subject: Re: Discovery Conference

Mr. Pinsky:

As I have not yet received your email of November 22, 2011, please forward a copy of same, including copies of the raw source and headers from same.

Sincerely,

koncept

Douglas Burda, Esq. | o | +001 702 518 0075 | m | +001 248 217 0002 | a | 900 las vegas boulevard south |
unit 1009 | las vegas nevada 89101

//

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From: D B <dbb@konceptlaw.com>

Date: Sat, 19 Nov 2011 12:35:59 -0800

To: <andrey@pinskylaw.ca>

Subject: Re: Discovery Conference

Mr. Pinsky:

As I've not yet heard back from Ms. Dunn regarding the availability of the Board for our Conference, and in light of the holidays which are rapidly approaching, I would recommend that we schedule our Discovery Conference presently, and amend our schedules if Ms. Dunn does have the opportunity to contact me regarding the Board's availability.

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I am prepared to make myself available at any time after 1:00 p.m. Pacific time on Tuesday, November 22 or Wednesday, November 23. Please let me know which of these dates is acceptable, at what time, and the best telephone number at which to reach you. If you cannot be available on either of these dates, the following Tuesday or Wednesday at the same times also works for me.

Thank you for your consideration and prompt reply.

Sincerely,

koncept

Douglas Burda, Esq. | o | +001 702 518 0075 | m | +001 248 217 0002 | a | 900 Las Vegas Boulevard South | unit 1009 | Las Vegas Nevada 89101-6860

//

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From: "Andrey Pinsky (Pinsky Law)" <andrey@pinskylaw.ca>

Date: Thu, 3 Nov 2011 14:22:18 -0400

To: Douglas Burda <dbb@konceptlaw.com>

Subject: Re: Discovery Conference

Mr. Burda,

1. You should not assume anything in life in general and in these proceedings in particular. I advised you that you would be communicating with me (and serving your documents) in a hard copy. Since you are unable (or not willing) to get a fax software to receive faxes, you leave mail as the only option for communication. I contacted you via email on an exceptional basis because we only have 10 days to schedule the Discovery Conference with participation of a Board Member. My mail would not reach you and your reply would not come back to me in these 10 days. All your correspondence to me after the Discovery Conference is scheduled must be in a hard copy.

2. Do not contact the Board behind my back without copying your correspondence to me. I consider contacts of the Board without copying correspondence to me to be a breach of Rules of Professional conduct and I will act accordingly. All your correspondence with the Board must be in writing and you must copy your correspondence to me.

3. You did not provide me with dates and times of your preference for the Discovery Conference. Please provide dates and times at which you are available for the conference in order to select a mutually convenient date and time.

Yours truly
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Andrey Pinsky (Pinsky Law)

Sent: Wednesday, November 02, 2011 6:11 PM

Subject: Re: Discovery Conference

Mr. Pinsky:

This email is sent on the assumption that communication via email is now acceptable to you. Please confirm your agreement to service of documents via email as well.

Regarding your dilatory request and message below, please note that I already requested via telephone, prior to your request, the presence of the Board at the Conference.

Further, I've been informed that Ms. Dunn has only recently returned to her office after being out on sick leave, so I would recommend that we accommodate Ms. Dunn's preferences on this matter, rather than your own.

Obviously, the Board's scheduling constraints take priority over our own, so it will be far more efficient for us to discuss our own availability after we are aware of the Board's. As such, after Ms. Dunn communicates the Board's availability, we will be in touch regarding same.

Note that the deadline for the Conference is December 2, 2011.

Sincerely

k ncept
douglas

58

On 11/1/11 1:54 PM, "Andrey Pinsky (Pinsky Law)" <andrey@pinskylaw.ca> wrote:

Mr. Burda,

I filed a request for a Board Member participation in the mandatory Discovery Conference. A copy of the request is attached. Please provide dates and times at which you are available for the conference in order to select a mutually convenient date and time.

Yours truly
Andrey Pinsky

Tel: (416) 221-2600
Fax: (416) 221-2640
www.pinskylaw.ca
900 - 45 Sheppard Ave. East
Toronto, ON, M2N 5W9
Canada

CONFIDENTIALITY NOTICE:

The contents of this e-mail message are confidential and strictly reserved for the sole use of Pinsky Law and the recipient(s) indicated in the message. This message may contain information protected by the solicitor-client privilege. If you received this message in error, please notify Pinsky Law immediately and delete the original message as well as all copies. Any disclosure, copying, distribution or reliance on the contents of the information is strictly prohibited. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

June 15, 2011

SENT BY EMAIL TO: TRADEMARKASSISTANCECENTER@USPTO.GOV
AND BY MAIL TO:

Caryn Glasser
Trademark Assistance Center
P.O. Box 15533 Madison East,
Concourse Level Room C.55
600 Dulany Street
Alexandria, VA 22314
USA

Dear Ms. Glasser

Re: Trademark "Koncept" USPTO file # 85176628

Please find enclosed letter to Mr. Douglas Burda concerning the abovementioned trademark application.

Yours very truly,

Andrey Pinsky

June 15, 2011

SENT BY EMAIL TO: HELLO@KONCEPTLAW.COM
DOUGLAS.BURDA@GMAIL.COM
TRADEMARKASSISTANCECENTER@USPTO.GOV

Douglas Burda
Koncept Innovative Law
P.O. Box 15533
Las Vegas, Nevada 89114
USA

Dear Mr. Burda

Re: Trademark "Koncept" USPTO file # 85176628

My name is Andrey Pinsky. I am the principal of Pinsky Law, a Canadian intellectual property law firm. As you are aware, CONCEPT LAWTM is trademark under which Pinsky Law distributes its intellectual property services for a number of years. My attention has been directed to your law firm's recent adoption of the trademark and trade name "Koncept Innovative Law" for a very similar legal services promoted and distributed in the same commercial channels.

Pinsky Law adopted the trademark CONCEPT LAWTM in 2007, not only in Canada and the United States but also internationally, and has been promoting its intellectual property services continuously since then. Pinsky Law has extensively promoted its CONCEPT LAWTM services to intellectual property practitioners in Canada, the United States, and internationally through brochures and monthly newsletters and has developed a valuable goodwill in the trademark since its adoption. Pinsky Law CONCEPT LAWTM newsletter has been delivered to thousands of intellectual property professionals in Canada, the United States, and internationally on a monthly basis. As a result, CONCEPT LAWTM has become a well-known trademark for intellectual property services.

Pinsky Law does not have a United States trademark registration for CONCEPT LAWTM, but it claims common law rights inuring to it from its long-standing use of that trademark. Trademark rights in the United States arise from use, not mere registration. I sincerely believe that the name "Koncept Innovative Law" and sale of intellectual property legal services under this name may mislead potential clients and intellectual property professionals into believing that your law firm services originate with Pinsky Law or that they are approved, sponsored, or supplied by Pinsky Law. I feel strongly that there is a high likelihood of confusion in the market place between Pinsky Law intellectual property services distributed under the trademark CONCEPT LAWTM and intellectual property services distributed under the name "Koncept Innovative Law". I believe that you are no more eager to suffer such confusion than Pinsky Law is. Accordingly, I ask that before your fledgling services get off the ground under the name "Koncept Innovative Law", you consider adopting another

name and another trademark that could not create any confusion with Pinsky Law long-standing trademark CONCEPT LAWTM.

My attention has also been directed to the fact that you filed trademark application for registration of the trademark "Koncept" on the principal register of the United States Patent and Trademark Office (USPTO). The trademark application (#85176628) was filed on November 15, 2010, and is still alive. You claimed June 12, 2010, as the date of first use of the trademark "Koncept". A simple Internet search for words "concept law" would have revealed to you that on both of those dates CONCEPT LAWTM was a trademark used by Pinsky Law to distribute its legal services. I can discern no legitimate commercial justification for your use and registration of the trademark "Koncept" other than to profit from Pinsky Law extensive advertising of the trademark CONCEPT LAWTM and the invaluable goodwill generated by it. Your actions are indefensible, as the numerous Federal cases demonstrate. I am asking you to voluntarily abandon your trademark application with the USPTO for the trademark "Koncept". I am asking you to abandon your trademark application in order to avoid expenses that will arise from expungement proceedings I will have to commence to cancel registration of the trademark "Koncept".

If you believe that I am mistaken in my conviction that there inevitably will be confusion between CONCEPT LAWTM trademark and "Koncept" trademark, I welcome your written comments. However, if I have persuaded you that there may be substantial confusion, it stands to reason that as the junior adopter, you might consider renaming your law firm and the trademark it uses to distribute its services. I look forward to receiving your written reply at your earliest convenience.

Yours very truly,

Andrey Pinsky

Copy to: Caryn Glasser United States Patent and Trademark Office by email and mail

Subject: Re: Intellectual Property

Date: Thursday, September 22, 2011 4:25:19 PM Pacific Daylight Time

From: Pinsky Law

To: Douglas Burda

Mr. Burda,

Thank you for your reply. I am not interested in a settlement. I am seeking a cancellation of your trademark registration. Please provide me with a fax number to serve you with my Petition to Cancel.

Thank you.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Anndrey Pinsky

Sent: Thursday, September 22, 2011 8:15 PM

Subject: Re: Intellectual Property

Mr. Pinsky:

Please contact me immediately by telephone. I believe we can settle this matter easier than you seem to think.

Sincerely,
Douglas Burda
Koncept
(248) 217-0002

From: Anndrey Pinsky <contact@pinskylaw.ca>

Reply-To: Anndrey Pinsky <contact@pinskylaw.ca>

Date: Thu, 22 Sep 2011 17:52:00 -0500

To: Douglas Burda <ddb@konceptlaw.com>

Subject: Intellectual Property

Your Name: Anndrey Pinsky

Your Email: contact@pinskylaw.ca

Your Telephone: (416) 221-2600

Your URL (YourURL.com): www.pinskylaw.ca

Your Twitter URL (twitter.com/yourtwitterURL):

Preferred contact method: Email

Subject: Intellectual Property

Communication: Good day Mr. Burda. I am commencing trademark cancellation proceedings in respect of your trademark KONCEPT. I have to serve you with my Petition to Cancel. Unfortunately, you do not provide a physical address of your law office on your website. You also do not provide a fax number of your law office. This lack of physical address of your law office and lack of fax number precludes me from serving you with my Petition to Cancel and violates a number of rules of the Nevada Bar Rules of Professional Conduct. Please provide me with your law office physical address, email, and fax number through which you permit me to serve you with my Petition to Cancel your trademark. Please provide this information not later than 14:00 on September 23, 2011. If I am not in receipt of this information by 14:00 on September 23, 2011, I will file a formal complaint with the Nevada Bar. I will be stating my inability to properly serve you with my Petition to Cancel as one of the grounds of my complaint, and I will be seeking from the Bar, inter alia, assistance to serve you with my Petition to Cancel. I sincerely hope that this will not be necessary and that you will provide me with an opportunity to properly serve you with my Petition to Cancel your trademark. Yours truly, Andrey Pinsky

63

Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

Date: Friday, September 23, 2011 4:58:58 AM Pacific Daylight Time

From: Pinsky Law

To: Douglas Burda

CC: Pinsky Law

Mr. Burda,

I am asking you to confirm that I can serve you with my Petition to Cancel by forwarding it via FedEx to:

Douglas Burda
Unit 1009
900 Las Vegas Boulevard South
Las Vegas, Nevada 89101
USA

I am also requesting your written consent to serve you with my Petition to Cancel via the email address dbur@kconceptlaw.com.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: [Douglas Burda](#)

To: [Pinsky Law](#)

Sent: Thursday, September 22, 2011 11:07 PM

Subject: KONCEPT® Trademark - United States Registration Number 3981394

Mr. Pinsky:

We are in receipt of a message sent by you through our website. I will reserve comment regarding whether such message was sent in accordance with the Terms of Use, to which you necessarily must have read and agreed so as to utilize our website and any message-sending functionality thereon.

Further, as you well know, your allegations regarding the Nevada Rules of Professional Conduct are baseless. Any complaint to the Nevada Bar will be reciprocated on a number of levels.

In any case, we believe the issues you purport to raise are without merit. Upon your filing of any cancellation proceeding involving our mark, we will contemplate a civil action against you in the federal courts of the United States of America as we believe that your threats are made fraudulently, in bad faith and with the objective of illegitimately interfering with our business. Additionally, we believe that your actions to date are in violation of the FCRP, which we will raise, together with your other claims made in bad faith, before the USPTO and elsewhere if necessary. In addition to your latest round of messages, we see your initial salvo as providing more than enough fodder to ensure that your actions are dealt with appropriately.

We will seek damages from you for any and all action you take regarding this matter, including without limitation for any and all attorney's fees resulting from your illegitimate actions. Nothing contained and/or omitted from this letter is intended to be or should be considered an admission of any fact or a waiver of any right or defense, all of which are expressly reserved.

Additionally, we are presently examining the applicability of The Canadian Bar Association's Code of Professional Conduct to your conduct, specifically with respect to certain rules in Chapter IX.

In any case, our office address is below which, by your own terms, settles your threat concerning the Nevada Bar complaint. We do not utilize a fax machine as it is an archaic technology. We welcome any further correspondence from you according to the applicable rules of practice.

Yours very truly,

k ncept
douglas

65

Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394
Date: Thursday, September 29, 2011 6:57:04 AM Pacific Daylight Time
From: Pinsky Law
To: Douglas Burda

66

Mr. Burda,

Your consent to service with my Petition to Cancel via email was requested on September 23, 2011, and was expected not later than the following day. Giving your consent to service via email today, after I served you with my Petition to Cancel via FedEx, is preposterous. I do not consent to communication and service of documents via email. To ensure proper record, I require communication and service via fax. Please provide your fax number. My fax number is (416) 221-2640. Since you appear to have difficulty to comprehend my messages first time around, I repeat - you have to communicate with me via fax only. Your communications via email and phone will not receive my reply.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda
To: Pinsky Law
Sent: Wednesday, September 28, 2011 7:59 PM
Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

Mr. Pinsky,

I consent to service of your Petition to Cancel via email to the email address you specified. Please specify the email address to which I should direct all papers in TTAB Cancellation Proceeding Number 92054551. Please also confirm your agreement that all such papers may be served via electronic transmission to such email address.

Sincerely,

k oncept llc
douglas@kconceptlaw.com

From: Pinsky Law <contact@pinskylaw.ca>
Date: Fri, 23 Sep 2011 08:58:58 -0400
To: Douglas Burda <dbb@kconceptlaw.com>
Cc: Pinsky Law <contact@pinskylaw.ca>
Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

Mr. Burda,

I am asking you to confirm that I can serve you with my Petition to Cancel by forwarding it via FedEx to:

Douglas Burda
Unit 1009
900 Las Vegas Boulevard South
Las Vegas, Nevada 89101
USA

I am also requesting your written consent to serve you with my Petition to Cancel via the email address dbb@kconceptlaw.com.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda
To: Pinsky Law

Sent: Thursday, September 22, 2011 11:07 PM

Subject: KONCEPT® Trademark - United States Registration Number 3981394

Mr. Pinsky:

We are in receipt of a message sent by you through our website. I will reserve comment regarding whether such message was sent in accordance with the Terms of Use, to which you necessarily must have read and agreed so as to utilize our website and any message-sending functionality thereon.

Further, as you well know, your allegations regarding the Nevada Rules of Professional Conduct are baseless. Any complaint to the Nevada Bar will be reciprocated on a number of levels.

In any case, we believe the issues you purport to raise are without merit. Upon your filing of any cancellation proceeding involving our mark, we will contemplate a civil action against you in the federal courts of the United States of America as we believe that your threats are made fraudulently, in bad faith and with the objective of illegitimately interfering with our business. Additionally, we believe that your actions to date are in violation of the FCRP, which we will raise, together with your other claims made in bad faith, before the USPTO and elsewhere if necessary. In addition to your latest round of messages, we see your initial salvo as providing more than enough fodder to ensure that your actions are dealt with appropriately.

We will seek damages from you for any and all action you take regarding this matter, including without limitation for any and all attorney's fees resulting from your illegitimate actions. Nothing contained and/or omitted from this letter is intended to be or should be considered an admission of any fact or a waiver of any right or defense, all of which are expressly reserved.

Additionally, we are presently examining the applicability of The Canadian Bar Association's Code of Professional Conduct to your conduct, specifically with respect to certain rules in Chapter IX.

In any case, our office address is below which, by your own terms, settles your threat concerning the Nevada Bar complaint. We do not utilize a fax machine as it is an archaic technology. We welcome any further correspondence from you according to the applicable rules of practice.

Yours very truly,

k ncept
douglas

68

United States of America

United States Patent and Trademark Office

KONCEPT

Reg. No. 3,981,394

Registered June 21, 2011

Int. Cl.: 45

SERVICE MARK

PRINCIPAL REGISTER

BURDA, DOUGLAS (UNITED STATES INDIVIDUAL)
P.O. BOX 15533
LAS VEGAS, NV 89114

FOR LEGAL SERVICES, IN CLASS 45 (U.S. CLS. 100 AND 101)

FIRST USE, 6-12-2010, IN COMMERCE, 6-12-2010

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-176,628, FILED 11-15-2010

CAPYN GLASSER, EXAMINING ATTORNEY



David J. Kyffes

David J. Kyffes, Esq., Attorney at Law

Subject: Re: KONCEPT[®] Trademark - United States Registration Number 3981394
Date: Thursday, September 29, 2011 12:00:11 PM Pacific Daylight Time
From: Pinsky Law
To: Douglas Burda

69

AUTOMATICALLY GENERATED EMAIL

September 29, 2011

Douglas Burda
Unit 1009
900 Las Vegas Boulevard South
Las Vegas, Nevada 89101
United States of America

Dear Mr. Burda:

Please note that the delivery of your email to Pinsky Law has failed. We are unable to receive your email correspondence. In the past, I repeatedly requested you to communicate with this office by fax only to the number (416) 221-2640. Since you persistently refused to communicate with this office by fax, we took measures to protect our legal interest. Please forward all future correspondence by fax only to the number (416) 221-2640.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda
To: Pinsky Law
Sent: Thursday, September 29, 2011 3:53 PM
Subject: Re: KONCEPT[®] Trademark - United States Registration Number 3981394

Mr. Pinsky:

Please see previous correspondence below. I await your response.

Sincerely,

k ncept
douglas

From: Douglas Burda <dbb@konceptlaw.com>
Date: Thu, 29 Sep 2011 10:39:43 -0700
To: Pinsky Law <contact@pinskylaw.ca>
Subject: Re: KONCEPT[®] Trademark - United States Registration Number 3981394

Mr. Pinsky:

70

As I already stated, we don't utilize a fax machine in my office and there is no requirement of same. The rules specifically exclude facsimile as an effective means of service. On the other hand, the Trademark Office specifically recognizes service of papers via email as effective if the parties agree, so I'm not understanding your position. It seems that you are disagreeing only for the purpose of creating roadblocks to resolution. Please confirm.

Likewise, my attempts at communication via email and telephone were in furtherance of resolution without the need to resort to utilizing the Trademark Office's valuable resources any further. Again, you have refused to respond to such communications except with messages denoting a clear desire to impede resolution.

As you alluded to before, this does not have to be as painful as you are making it. In any case, given your response to my last email, your receipt of my previous attachment is confirmed.

Sincerely,

koncept

douglas

From: Pinsky Law <contact@pinskylaw.ca>

Date: Thu, 29 Sep 2011 10:57:04 -0400

To: Douglas Burda <dbb@konceptlaw.com>

Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

Mr. Burda,

Your consent to service with my Petition to Cancel via email was requested on September 23, 2011, and was expected not later than the following day. Giving your consent to service via email today, after I served you with my Petition to Cancel via FedEx, is preposterous. I do not consent to communication and service of documents via email. To ensure proper record, I require communication and service via fax. Please provide your fax number. My fax number is (416) 221-2640. Since you appear to have difficulty to comprehend my messages first time around, I repeat - you have to communicate with me via fax only. Your communications via email and phone will not receive my reply.

Yours truly,
Andrey Pinsky

----- Original Message -----

From: Douglas Burda

To: Pinsky Law

Sent: Wednesday, September 28, 2011 7:59 PM

Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

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Sincerely,

koncept llc

douglas

From: Pinsky Law <contact@pinskylaw.ca>

71

Date: Fri, 23 Sep 2011 08:58:58 -0400
To: Douglas Burda <dbb@konceptlaw.com>
Cc: Pinsky Law <contact@pinskylaw.ca>
Subject: Re: KONCEPT® Trademark - United States Registration Number 3981394

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Douglas Burda
Unit 1009
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Las Vegas, Nevada 89101
USA

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Yours truly,
Andrey Pinsky

----- Original Message -----

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To: Pinsky Law
Sent: Thursday, September 22, 2011 11:07 PM
Subject: KONCEPT® Trademark - United States Registration Number 3981394

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We will seek damages from you for any and all action you take regarding this matter, including without limitation for any and all attorney's fees resulting from your illegitimate actions. Nothing contained and/or omitted from this letter is intended to be or should be considered an admission of any fact or a waiver of any right or defense, all of which are expressly reserved.

Additionally, we are presently examining the applicability of The Canadian Bar Association's Code of Professional Conduct to your conduct, specifically with respect to certain rules in Chapter IX.

In any case, our office address is below which, by your own terms, settles your threat concerning the Nevada Bar complaint. We do not utilize a fax machine as it is an archaic technology. We welcome any further correspondence from you according to the applicable rules of practice.

Yours very truly,

k ncept
douglas

CANADIAN TRADEMARK OPPOSITION PROCEEDINGS

Opposition Proceedings are commenced by a Statement of Opposition on behalf of opponent(s). A person's right to oppose an application is a remedy that cannot be taken away from it thus, even where such person may have acquiesced in the use of a trademark, this does not constitute acquiescence in the registration of the trademark.

The Statement of Opposition is a pleading which specifies the grounds on which the opponent will rely in the proceedings and in connection with which the opponent will file supporting evidence. The Statement of Opposition must be filed within two months of the date of the advertisement of the application, along with the required fee, or if permitted by the Registrar at any time up to allowance of the application for registration. Once an application is opposed, the application procedure is suspended, thereby preventing an application from amending the application to rely on secondary meaning under section 12(2).

The deadlines to file pleadings, evidence, request cross-examination, file written arguments and request an oral hearing are set out in the *Trademarks Act* and the *Trademarks Regulations*. The Registrar has recognized that the time limits set by the Act and Rules for opposition are impracticable and has published a policy statement as to the grounds for extension of time. Extensions of time are often necessary, due to the multinational nature of trademark opposition. Extensions of time are now complicated, due to different rules governing extensions for applications advertised pre and post October 1, 2008. New rules governing extensions are effective March 31, 2009. A new feature introduced in the March 31, 2009, rules is a "cooling off period" – a one time extension, available to both parties at specific stages of the opposition, for a maximum of nine months. Because the cooling off period is available to both parties, the maximum length of the cooling off period is 18 months. The reality is that despite the introduction of the cooling off period, extensions of time are more difficult to obtain than previously.

The Registrar inspects the Statement of Opposition and if he finds it does not raise a substantial ground of opposition, he may refuse the opposition, otherwise he will forward a copy of the statement of Opposition to the applicant. The decision of the Registrar that there is a substantial issue is not appealable; the process must continue until a final determination of the opposition. The Statement of Opposition does not need to be overly technical, for instance the precise wares or services said to be confusing need not be enumerated. It is the policy of the Trademarks Office that if an applicant is having difficulty in replying to a Statement of Opposition that appears to be unclear, the applicant is to seek clarification directly from the opponent or raise an objection in its Counterstatement.

A Statement of Opposition may be amended at any time before the Registrar has made a decision. It is important to plead carefully, initially, as the Court is limited on appeal to the grounds pleaded. A party may apply to the Registrar to strike or for amendment of the other party's Statement of Opposition and the Registrar should consider arguments as to the sufficiency of a Statement of Opposition before evidence is filed. The Applicant then has two-month period, or such longer period of time as is allowed by the Trademark Office, within which to file a counter statement in response to the Statement of Opposition, failing which the application is deemed to be abandoned.

The next step is the filing of evidence by the opponent by way of affidavit or statutory declaration with a copy to the applicant within four months failing which the opposition is deemed to have been abandoned. The evidence must contain relevant facts in support of the Statement of Opposition. Hearsay evidence, such as that of a cor-

porate officer testifying as to business records and transactions of a corporation, is admissible. The failure to provide relevant evidence by a party reasonably expected to have such evidence, without explanation, can lead to adverse inferences being drawn. Relevant evidence includes advertising and promotional materials for the wares and services, market share information, and packaging materials in relation to wares.

Cross-examination on any affidavit filed in an opposition proceeding may be held only if ordered by the Registrar on request from the opposite party. There is no absolute right to a cross-examination, although the registrar usually gives permission to do so if a request is made within two months from the date of submission of the evidence. The party requesting the cross-examination is responsible for its costs and for the preparation of the transcripts from the cross-examination. A person being examined may refuse to answer certain questions, however, a negative inference may be given in respect of the evidence offered by that witness.

Fourteen days after completion of all evidence, the Registrar will call for the filing of written argument, in duplicate. The written arguments are distributed by the Registrar when all arguments are received. There is no obligation on any party to an opposition to file a written argument. If a written argument is filed, it should contain a review of the evidence, the law as it pertains to the case, and the party's viewpoint of the relevance of the facts and the law to the case.

Upon receipt of the other party's written argument, or upon expiration of the time allotted by the Trademarks Office to file written arguments, either party may request an oral hearing. In the opposition, the onus remains on the applicant to prove that its mark is registrable and not confusing, but the burden of proof in establishing each ground of opposition remains with the opponent. The relevant date for determining confusion is the date of the decision by the Hearing Officer. Issue estoppel will apply to opposition proceedings provided the proper legal bases, as to parties or their privies being identical and issues being identical, apply. There is no obligation on either party to attend an oral hearing.

If no oral hearing is requested, the Registrar will render a written decision in the opposition on the basis of the file contents. If an oral hearing is held, the Registrar will render a written decision after conclusion of the hearing and the basis of the file contents. The decision will be to allow or reject the opposition in whole or in part, with reasons. The burden of proof required to be imposed by the Registrar is not that of "doubt" or "reasonable doubt" but simply that of an ordinary civil matter. The risk of confusion must be tangible and not theoretical. The onus remains on the applicant to show that the trademark is registrable, for instance, that there is no likelihood of confusion.

However, the allegations of confusion must have some air of reality. A decision of the Registrar can be appealed to the Federal Court within two months of the decision's dispatch. On appeal, the onus remains on the applicant to establish its right to registration. The appeal process is governed by the *Trademarks Act* and the *Rules* of the Federal Court of Canada. At present, there is no provision for an award of costs to a successful party in an opposition proceeding in Canada.

CONCEPT LAW™

EFFECTS OF CANADIAN PATENT REGISTRATION

Sufficiency

Subsection 27(3) of the Patent Act requires that a specification must correctly and fully describe the invention and its operation as contemplated by the inventor; set out clearly the process; in the case of a machine, explain the best mode and in the case of a process, set out clearly the relevant sequence of steps. Unlike the practice in the United States, "best mode" applies only to machines.

A patent may be attacked on the ground of insufficiency, that is, that it fails to describe the invention such that a person skilled in the art could put it into practice. For this purpose, a patent must first be construed properly. Sufficiency is considered in light of the knowledge that a skilled person would have possessed as of the relevant date; such knowledge would not include that contained in another patent issued on that same date. Sufficiency must be determined on the basis of what is disclosed in the patent and not on the basis of data outside the patent. While a court may presume that a patent describes the invention as contemplated by the inventors where there is evidence as to what the inventors actually did and contemplated, sufficiency must be considered as to whether the patent correctly and fully describes the invention as contemplated by the inventors.

Insufficiency is a separate ground from ambiguity. Insufficiency is directed to whether specification is sufficient to enable a person skilled in the art to understand how the subject matter of the patent is to be made; ambiguity is directed to the issue as to whether the scope of the monopoly can be understood. Sufficiency is a question of fact whereas ambiguity is a question of law. An allegation of insufficiency is a technical attack that should not operate to defeat a patent for a meritorious invention; such attack will succeed where a person skilled in the art could not put the invention into practice. Where the specification asserts that a certain result has been achieved with the patented invention but the underlying data demonstrates that the result, in accordance with generally accepted principles, is much less than promised, the specification lacks sufficiency and the patent is invalid. However if a patent indicates that the invention might be useful in certain matters, but makes no promise or claim in that regard, it is not insufficient.

File Wrapper Estoppel

In the United States it is common to use statements made by an applicant to the patent examiner during the course of prosecution for the purpose of limiting the scope of the patent; this concept is often called file wrapper estoppel. However, in Canada, a statement made by the agent of a patentee in the course of the prosecution of his/her application for a patent, whether in Canada or a foreign country, is inadmissible for the purpose of constructing the claims in the patent granted to him/her or limiting the ambit of the invention defined in them. The Courts has permitted file wrappers, both domestic and foreign, to be introduced and examined upon on discovery on the basis that on some occasions evidence therefrom has been

led at trial and they might lead to an inquiry as to a relevant matter. The files of patent agents relating to foreign prosecution of applications which never matured to patents have been ordered to be produced on discovery where validity and prior art were at issue. Corporate invention records submitted to in-house attorneys for evaluation as to patentability have been held to be privileged. No privilege attaches in Canada to communications with a patent agent; however, where the agent is also a lawyer, any proper privilege that a lawyer may claim is not lost simply because the lawyer may also be a patent agent. Proof must be made, however, that the lawyer is acting as a lawyer, not as an agent.

Grant and Term

Every patent is issued under the seal of the Commissioner and bears on its face the date filing of the application. Also, in the case of an application filed after October 1, 1989, each patent bears the date that the application was laid open to the public and the date the patent was issued and granted. The patentee is thereby granted, after issue, the exclusive right privilege and liberty of making, constructing, using and vending to others to be used, the invention for the term of the patent, subject to adjudication before any Court of competent jurisdiction. In addition any patentee of a patent granted upon an application filed after October 1, 1989, has the right to be paid reasonable compensation for the period between the date the patent was laid open for public inspection and the date of grant.

The term of a patent granted upon an application filed after October 1, 1989, is 20 years from the date of filing of that application in Canada. Maintenance fees must be paid annually upon every patent granted after October 1, 1989, failing which the patent will be deemed to have lapsed. A patent provides legal protection against the world, that is, others who might come into possession of it and overcomes common law alternatives, such as attempts to keep it secret or bind others by contract.

Patentee

The Patent Act provides that every patent granted grants to the patentee and the patentee legal representatives the exclusive right privilege and liberty of making constructing and using the invention and selling it to others to be used. The patent Act gives to the patentee and to all persons claiming under the patentee, a right to recover all damages sustained by reason of infringement. Persons claiming under a patentee have been judicially held to include exclusive and non-exclusive licensees as well as purchasers of patented articles. The monopoly right attached to the holding of a patent cannot be seen as having a value independent of the profits that may be deemed from the marketing of the patented invention.

EFFECTS OF CANADIAN TRADEMARK REGISTRATION

Term and Conditions

A trademark application, other than one based on proposed use, that has been examined, approved and advertised without successful opposition will be allowed and registered and a certificate issued to the applicant. An application based on proposed use will require a declaration that the trademark is in use in Canada before registration. Registration is made in the name of the applicant or, if the mark is transferred, then in the name of the transferee. Registration takes effect as of the day of its registration, and remains on the register subject to renewal every 15 years. *Prima facie* registration of a trademark is considered to be valid and gives to the registered owners the exclusive right to use the trademark as registered throughout Canada in respect of the wares or services or both in respect of which it is registered. The main purpose of the registration of a trademark is to protect the public from confusion.

A registered trademark may be expunged for non-use in proceedings in the Trademarks Office, or if held to be invalid it will be expunged from the register by the Courts. Marking the trademark when used is not required by the Trademarks Act, it has been suggested that the letter "R" within a circle or the letters "TM" within a circle would convey the same impression to the public, namely that the trademark was registered.

Right to Use

A registered trademark gives to its owner the exclusive right to the use of that trademark throughout Canada in respect of the wares or services for which it is registered, subject to any finding of invalidity. The principal advantage of registration is to extend the geographical area over which exclusive use may be exercised to the whole of Canada, however, in the case where the trademark is a distinguishing guise or is registered only because secondary meaning has been established, the Registrar may restrict the registration to certain of Canada only. There is nothing to prevent two registered trademarks from being used at the same time. Cautious variations may be made to a trademark as it is used over the years as long as the same document features are maintained.

Those rights conferred by registration are described as enabling rights and thus cannot afford an affirmative defence in proceedings such as those taken under the Competition Act seeking to restrain the use of a trademark, however the registration of a trademark should appear to afford a complete defence to an action for passing off or under section 7(b) of the Trademarks Act. However, the Federal Court has indicated that, in proper circumstances, where the validity of the registration is challenged, an interlocutory injunction might issue.

The owner of a registered trademark may assert as a defence in an action brought by a third party of another trademark infringement, that registration entitles him to use the mark of a third party. Such defence is, however, good only if the registration is not subsequently found to be invalid. The Courts have said that a registered owner of a trademark is *prima facie* entitled to some protection, such as an interlocutory injunction.

Concurrent Use by Third Parties

An occasion may arise where, after a trademark has been registered, it is discovered that a third party has been using or making known a confusing trademark for some time prior to the registered owner.

Where the registration of the trademark has been for less than five years, the prior user or person making known the trademark may bring proceedings to expunge the registration with the onus that he must prove that he has not abandoned his use or making known. Where the registration of the trademark has subsisted for more than five years, that registration cannot be expunged on the basis of prior use or making known, by a third party unless it can be shown that the person who adopted the registered trademark did so with knowledge of the prior use or making known. However, the person having the prior use or making known may apply to the Federal Court for an order that it can continue the use of the trademark, which order is discretional and shall restrict the use to a defined territory and may impose other terms so as to distinguish that trademark from the other.

Protection of Goodwill

When a trademark is registered no third party may use that trademark in such a way as to depreciate the value of the goodwill attached thereto. There can be no action for depreciation of goodwill of an registered trademark, at least not in the Federal Court under the provisions of the Trademark Act. Nothing in Section 22 requires a demonstration that use of both trademarks in the same geographic area would lead to confusion. All that needs to be shown is that use has been made of a mark that is sufficiently similar such as to evoke, in the relevant group of consumers, a mental association that is likely to depreciate the value of the goodwill.

Sections 20 and 22 are two conceptually different courses of action. Section 22 requires four elements: first, that the claimant's registered trademark must be used by another in connection with wares or services, whether or not they are competitive with those of the claimant; second, that the claimant's mark be sufficiently well known so as to have goodwill attaching to it – it need not be well known within the meaning of the Trademarks Act nor famous; third, the use by another must be likely to have an effect on the goodwill; and fourth, that it is likely to depreciate the value of that goodwill.

Renewal of Registration

The registration of a trademark, if not expunged, subsists for a term of 15 years and may be renewed for a further period of 15 years at the expiry of the first 15 years and each 15-year period thereafter. Renewal may be requested by a simple letter to that effect signed by the owner or his trademark agent filed with the Trademarks Office with the appropriate fee. If such renewal has not been requested before the expiry of the then current term for registration, the Trademarks Office will send a renewal notice after expiry date. Such renewal notice will specify that the registrant has a period of six months from the date of the notice to renew the trademark. This six-month grace period is not extendable. If a trademark registration is not renewed, the Registrar must expunge the registration. Failure to renew a registration does not mean that the common law rights to a trademark are abandoned. Those rights continue as long as there is use of this trademark.

EXAMINATION OF A CANADIAN PATENT APPLICATION

An inventor, or legal representative of an inventor, of an invention may obtain a patent granting to him an exclusive property in the invention providing the inventor complies with all requirements of the *Patent Act*. A careful examination of each patent application must be made by competent examiners to be employed in the Patent Office. Whenever the Commissioner of Patent is satisfied by way of substantive examination of the application that the applicant is not by law entitled to be granted a patent, he shall refuse the application. The Commissioner of Patents must notify the applicant by registered letter addressed to the applicant of the refusal and the grounds or reasons for such refusal.

Every person who has failed to obtain a patent by reason of a refusal or objection by the Commissioner to grant the patent may at any time within six months after notice, as provided for in section 40 of the *Patent Act*, appeal from the decision of the Commissioner to the Federal Court.

The Patent Office does not automatically examine a completed patent application filed on or after October 1, 1989. The *Patent Act* provides for deferred examination on the basis that the Commissioner must be requested to examine the patent application. Any person may request examination of the patent application in accordance with the prescribed manner and on payment of the prescribed fee. The period for requesting examination of the application expires five years from the date of filing of the application in Canada. The period for requesting examination in an application filed before October 1, 1996, is seven years from the filing date.

The information required in requesting examination of the application is as follows: (1) the name and address of the person making the request; (2) if the person making the request is not the applicant for the patent, then the name of the applicant for the patent must be identified; sufficient information to identify the application, such as, the serial number.

The patent application is deemed abandoned if the request for examination is not made within the five year period or the prescribed fee is not paid within that period. The Commissioner of Patent may require the applicant to request examination or to pay the prescribed fee within the five year period. Correspondingly, if the applicant does not request examination or pay the prescribed fee as required by the commissioner within the period specified in the notice from the commissioner, which will not exceed the five year period, the application is also deemed abandoned.

An application, abandoned for failure to request examination, may be reinstated. A request to reinstate an application must be presented within 12 months after the date on which the application was deemed to have been abandoned. The request to reinstate the application must include the following: (1) a request for examination of the application; (2) payment of the prescribed fee for requesting examination of the application as set out in the Item 2 of Schedule II of the *Rules*; and (3) payment of the prescribed reinstatement fee as set out in the item 7 of Schedule II of the *Rules*.

The time for pending reinstatement, i.e., the 12 months from the date of abandonment could not be extended. The provisions regarding requesting examination of the application and petitioning for reinstatement for failure to request examination do not apply in respect of (1) patent applications filed prior to October 1, 1989;

(2) a divisional application which bears a filing date prior to October 1, 1989; or (3) an application for reissue of a patent. In respect of divisional application, examination must be requested within five years after the date of the filing of the original application in Canada or within six months after the date of the filing of the divisional application, whichever date is later.

An application is not normally advanced for examination out of its routine order. However, when the commissioner determines that failure to advance the application is likely to prejudice the applicant's rights, the Commissioner may advance examination out of the routine order. The applicant has to request advancement of examination and pay the prescribed fee.

Effective January 28, 2008, and for period of one year until January 28, 2009, the Patent Office has instituted a pilot project called the Patent Prosecution Highway (PPH) initiative. The PPH was intended to provide a procedure for accelerating examination of patent applications where examination work has already been conducted in the United States Patent Office (USPTO). Under the PPH, if claims have been found to be acceptable by the USPTO, an accelerated examination could be requested of the corresponding Canadian application. The PPH program with the USPTO has been extended to January 28, 2011, and other similar programs have been instituted with Japan, Denmark and Korea.

If after due consideration of the application by the patent examiner, he has objections to the application based on non-compliance with the *Patent Act* or *Patent Rules*, he may issue an office action addressed to the applicant or his agent of record. The applicant has six months to respond to any office action provided by the patent examiner. This patent review system has been described as being very flexible and responsive to new objections. If the applicant does not respond within six months of such notice, the application shall be deemed to have been abandoned. An application may also be deemed to be abandoned if the applicant does not reply in good faith to a requisition made by the examiner. Where an applicant fails to respond to a requisition and the application is not reinstated within the year provided to rectify the situation, the patent application is abandoned as a matter of law. This is not a discretionary decision that can be reviewed by the Courts. A good faith response includes full and frank disclosure as to public disclosures made by or known to the applicant as to the nature and effect of relevant prior art. An application deemed abandoned for failing to respond to an office action may be reinstated within 12 months of the deemed date of abandonment by (1) filing a response to the office action; and (2) paying the prescribed reinstatement fee as set out in item 7 of Schedule II of the *Rules*.

The obligations to respond to a requisition in a good faith were not in the *old Patent Act*. The two *Acts* contain different rules in this respect. While the current *Patent Act* requires a reply in good faith to every requisition made by an examiner, the *old Act* merely required an applicant to make a *bona fide* attempt to advance a patent application to allowance as whole. These requirements are different. Under the *old Act*, if the applicant made a genuine attempt to advance the application to allowance, the application was deemed to be prosecuted, and there was no abandonment even if a specific requisition was not answered. There was nothing in the *old Patent Act* that suggested that every requirement in an office action must be responded to in order to constitute a *bona fide* attempt to advance the application to allowance.

174 KB

Prod: RapidWeaver Sandwich

Size: 174,427 bytes (215 KB on disk)

Where: `\\Users\dbo\Documents:`

Radon Care

Created: Sunday, May 2, 2010 8:07 PM

Modified: May 12, 2010 12:03 PM

1000

Locked

More info

Last opened: Today 3:51 PM

Name & Extension

Koncept.rwsw

Hide extension

Open with:



550 RapidWeaver.com

Use this application to open all documents like this one

Previous



Sharing & Permissions

You have custom access

Name	Privilege
dbb (Me)	Read & Write
staff	Read only
everyone	Read only

77

"Andrey Pinsky \Pinsky Law\" <andrey@pinskylaw.ca>
Trademark "Koncept", USPTO file # 85176628
June 15, 2011 1:18:03 PM PDT
<HELLO@KONCEPTLAW.COM>
<DOUGLAS.BURDA@GMAIL.COM>.
<TRADEMARKASSISTANCECENTER@USPTO.GOV>

Dear Mr. Burda,

Please find enclosed letter to you which has been also sent to Ms. Caryn Glasser at the United States Patent and Trademark Office. Neither your website, nor the USPTO file, nor your file with the Nevada Bar Association provide your fax number. Accordingly, this letter is sent to you electronically.

Yours truly
Andrey Pinsky

Tel: (416) 221-2600
Fax: (416) 221-2640
www.pinskylaw.ca
900 - 45 Sheppard Ave. East
Toronto, ON, M2N 5W9
Canada

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PINSKY LAW
Intellectual Property & Technology Law

905-221-2600
45 SHEPPARD AVE. EAST
TORONTO, ONT. M2N 5W9
CANADA

$$\begin{aligned} \mathbf{E}(\mathbf{y}|\mathbf{X}) &= \mathbf{X}(\mathbf{X}'\mathbf{X})^{-1}\mathbf{X}'\mathbf{y} = \mathbf{Z}\mathbf{W}\mathbf{W}'\mathbf{Z}'\mathbf{y} \\ \mathbf{E}(\mathbf{y}|\mathbf{X}) &= \mathbf{X}(\mathbf{X}'\mathbf{X})^{-1}\mathbf{X}'\mathbf{y} = \mathbf{Z}_1\mathbf{W}_1\mathbf{W}_1'\mathbf{Z}_1'\mathbf{y} \\ &= \mathbf{Z}_1\mathbf{W}_1\mathbf{W}_1'\mathbf{Z}_1'\mathbf{Z}_1\mathbf{W}_2\mathbf{W}_2'\mathbf{Z}_2'\mathbf{y} = \mathbf{Z}_1\mathbf{W}_1\mathbf{W}_1'\mathbf{W}_2\mathbf{W}_2'\mathbf{Z}_2'\mathbf{y} \end{aligned}$$

SENT BY EMAIL TO: TRADEMARKASSISTANCECENTER@USPTO.GOV
AND BY MAIL TO:

Dear Ms. Glasser

Re: Trademark "Koncept" USPTO file # 85176628

Please find enclosed letter to Mr. Douglas Burda concerning the abovementioned trademark application.

Yours very truly,

Andrey Pinsky

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Domain Name: **KONCEPTLAW.COM**
 Registrar: **WILD WEST DOMAINS, INC.**

Domain Name: **KONCEPTLAW.COM**
 Registrar: **WILD WEST DOMAINS, INC.**

Domain Name: **KONCEPTLAW.COM**
 Registrar: **WILD WEST DOMAINS, INC.**

Domain Name: **KONCEPTLAW.COM**
 Registrar: **WILD WEST DOMAINS, INC.**

Is this your
domain?
Add hosting, email and more

Want to buy
this domain?
Get it with our Domain Buy service.

Domain Name: **KONCEPTLAW.COM**
 Registrar: **WILD WEST DOMAINS, INC.**

Whois Server Version 2.0

Domain names in the .com and .net domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information.

Domain Name: **KONCEPTLAW.COM**
 Registrar: **WILD WEST DOMAINS, INC.**
 Whois Server: **whois.wildwestdomains.com**
 Referral URL: **http://www.wildwestdomains.com**
 Name Server: **NS69.CIRTEXHOSTING.COM**
 Name Server: **NS70.CIRTEXHOSTING.COM**
 Status: **clientDeleteProhibited**
 Status: **clientRenewProhibited**
 Status: **clientTransferProhibited**
 Status: **clientUpdateProhibited**
 Updated Date: **21-mar-2011**
 Creation Date: **12-may-2010**
 Expiration Date: **12-may-2013**

>>> Last update of whois database: **Wed, 21 Dec 2011 00:58:15 UTC <<<**

NOTICE: The expiration date displayed in this record is the date the registrar's sponsorship of the domain name registration in the registry is currently set to expire. This date does not necessarily reflect the expiration date of the domain name registrant's agreement with the sponsoring registrar. Users may consult the sponsoring registrar's Whois database to view the registrar's reported date of expiration for this registration.

TERMS OF USE: You are not authorized to access or query our Whois database through the use of electronic processes that are high-volume and automated except as reasonably necessary to register domain names or modify existing registrations. The Data in VeriSign Global Registry Services' ("VeriSign") Whois database is provided by VeriSign for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. VeriSign does not guarantee its accuracy. By submitting a Whois query, you agree to abide by the following terms of use. You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail, telephone

or facsimile; or (2) enable high volume, automated, electronic processes that apply to VeriSign (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of VeriSign. You agree not to use electronic processes that are automated and high-volume to access or query the Whois database except as reasonably necessary to register domain names or modify existing registrations. VeriSign reserves the right to restrict your access to the Whois database in its sole discretion to ensure operational stability. VeriSign may restrict or terminate your access to the Whois database for failure to abide by these terms of use. VeriSign reserves the right to modify these terms at any time.

The Registry database contains **ONLY .COM, .NET, .EDU** domains and Registrars.

[See Standard Abuse](#)

NameMatch Recommendations

GoDaddy's NameMatch service is a trademark of GoDaddy.com, Inc. NameMatch is a service that allows you to register domain names that are similar to the domain name you are currently registered with. NameMatch is a service that allows you to register domain names that are similar to the domain name you are currently registered with. NameMatch is a service that allows you to register domain names that are similar to the domain name you are currently registered with.

Domains available for new registration:

Similar Premium Domains

LawCourse.org	\$499.00*
LawCertificate.com	\$1,549.00*
DepositionLaw.com	\$499.00*
LawZip.com	\$3,288.00*
LawFax.com	\$2,600.00*
LawDev.com	\$2,988.00*

Domains available at Go Daddy Auctions@:

LawCourse.org	\$48,088.00*
LawCertificate.com	\$500.00*
DepositionLaw.com	\$15,000.00*
LawZip.com	\$1,850.00*
LawFax.com	\$25,000.00*
LawDev.com	\$8,000.00*

Learn more about

GoDaddy's NameMatch service is a trademark of GoDaddy.com, Inc. NameMatch is a service that allows you to register domain names that are similar to the domain name you are currently registered with. NameMatch is a service that allows you to register domain names that are similar to the domain name you are currently registered with.

*Plus ICANN fee of \$0.15 per domain name/year

**All domain names will be registered through GoDaddy Domains Canada, Inc., a CIPA certified registrar.

.com

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Account Manager	Shopping	Resources	Help & Support	About Go Daddy	Mobile	Partners
My Account	Domain Search	Webmail	Telephone Support & Sales	About Us	Go Daddy App for iOS	
My Renewals	Product Catalog	WHOIS Search	Go Daddy Community	News Releases	Release Applications	
My Upgrades	Product Advisor	ICANN Confirmation	Discussion Forums	Careers	iPad Application	
Account Settings	Go Daddy Gear	Affiliates	Help and Guides	Marketing Opportunities	Android Application	
Customer Information	Gift Cards	Follow & Fan Us	User Groups	Customer Testimonials	StarMoney Application	
Order History	Go Daddy Mobile	Legal	Submit Support Ticket	Security Center	Visit GoDaddyMobile.com	
Create Account	Deals of the Day	Commercial Contests	Site Suggestions	J&E Scholarship	Sign Up for Special Offers	
		Site Map	Report Spam	Round Up for Charity	Email us today!	
			Go Daddy Store			

Our Partners

Use of this Site is subject to our [Terms of Use](#). By using this Site, you signify that you agree to be bound by these [Terms of Use](#), which were last revised on August 5, 2011.

GoDaddy.com is the authorized U.S. Web-enabled domain name registrar for .COM, .NET, .ORG, .INFO, .BIZ and .US domain categories. Domain Transfer: [GoDaddy.com](#)

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Although it often appears "V/HQIS" or "Whois", the term is not an acronym. It means literally "Who is", referring to the searchable database that stores domain information for every URL currently registered on the Internet. Think of the WHOIS database as the "white pages" of the Internet neighborhood.

Search the GoDaddy.com WHOIS database whenever you want to know who a particular Web site belongs to. You may even be able to find the name and contact information of the business or individual who holds the registration on that domain. If the registration is private, specific information such as the holder's name, address, phone number and email address will be hidden from public view.

There are a number of reasons why you might want to use the GoDaddy.com WHOIS database:

- If you're a domainer, you might have your eye on a particular domain name(s) and want to know when it expires in the hopes of registering it yourself. You might also wish to approach the registrant with a private purchase offer.
- If you are the legal owner of a copyrighted name and you find someone else has registered a domain with that name in it, you'll want to take legal action against whoever's infringed on your rights by "cyber-squatting" on your Internet territory.
- If you come across your own original content reproduced without permission on another Web site, you may want to look up the name of the domain registrant in order to file a DMCA complaint against him or her. This federal act makes it illegal for anyone to produce or distribute another's original material on the Internet.

Law enforcement agencies use the WHOIS database to support national and international efforts including copyright protection and anti-terrorism laws. They're able to identify the registrant - or at least the host or registrar - of every domain name registered today. Legal infractions that can't be traced to an individual or business can certainly be traced to a registrar. Depending on the offense, the registrar may warn the site owner or shut down the Web site altogether.

GoDaddy.com has been active in combating Internet crime and abuse. GoDaddy.com lawyers have testified before the U.S. House Judiciary Subcommittee on Crime, Terrorism and Homeland Security about the rapid proliferation of illegitimate pharmacies and child pornography on the Internet. In fact, the company had a hand in the 2008 passage of the Ryan Haight Online Pharmacy Consumer Protection Act, named after a California teenager who died from an overdose of a drug he bought online.

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

ANDREY PINSKY,

Petitioner,

v.

DOUGLAS BURDA

Registrant.

Cancellation No. 92054551

THIS IS EXHIBIT "3" TO THE DECLARATION OF
ANDREY PINSKY OF TORONTO, ONTARIO, DATED MARCH 23, 2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY

Petitioner,

v.

Cancellation No. 92054551

DOUGLAS BURDA

Respondent.

REGISTRANT'S INITIAL DISCLOSURES

Respondent, Douglas Burda (Registrant), recognizing that the obligation of the parties to a cancellation proceeding to make initial disclosures is integral to the efficient conduct of Trademark Trial and Appeal Board (Board) proceedings, makes the following initial disclosures pursuant to the applicable rules of practice before the Board.

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION.

A. Mr. Douglas Burda, Esq.
900 Las Vegas Boulevard South, Unit 1009
Las Vegas, Nevada 89101
USA
(248) 217-0002

Registrant anticipates that Mr. Burda has discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter including without limitation information relevant to the disputed facts in this matter.

- B. Mr. Andrey Pinsky, also known as Mr. Anndrey Pinsky
45 Sheppard Avenue East, Suite 900
Toronto, Ontario M2N 5W9
Canada
(416) 221-2600

Registrant anticipates that Mr. Pinsky has discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter including without limitation information relevant to the disputed facts in this matter.

- C. [presently-unidentified individuals]

Registrant anticipates that presently-unidentified individuals referenced by Petitioner in a telephone conversation between Petitioner and Registrant, wherein Petitioner stated that it will cost Registrant "a fortune" to take the depositions of such individuals, will have discoverable information regarding the facts and circumstances underlying Petitioner's claims in this matter.

II. LISTING, DESCRIPTION AND LOCATION OF CATEGORIES OF DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS.

The following items, which are within the possession or control of Registrant, may be relevant to the disputed factual issues:

- A. Correspondence between the parties;
- B. Documents detailing Petitioner's offerings under Petitioner's alleged CONCEPT LAW trademark;
- C. Documents detailing Registrant's attorney status;
- D. Records regarding Registrant's domain name;
- E. Records regarding Registrant's logo;
- F. Specimens of use of Registrant's KONCEPT trademark;

G. Website source files.

III. PROOF OF DATE OF FIRST USE IN COMMERCE OF THE MARK "KONCEPT".

A. Electronic copy of Certificate of Registration from the United States Patent and Trademark Office' Trademark Applications and Registrations Retrieval database for the registered KONCEPT trademark (attached hereto as Exhibit 1).

IV. DUTY TO SUPPLEMENT.

Registrant reserves the right to supplement these initial disclosures as discovery continues. These initial disclosures are based only on currently available information within Registrant's possession, custody and control.

December 26, 2011

Sincerely,



Douglas Burda
KONCEPT® LLC
900 Las Vegas Boulevard South
Unit 1009
Las Vegas, Nevada 89101
Phone. (248) 217-0002
Email. dbb@konceptlaw.com
Attorney & Registrant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY

Petitioner,

v.

Cancellation No. 92054551

DOUGLAS BURDA

Respondent.

REGISTRANT'S EXHIBIT 1 TO REGISTRANT'S INITIAL DISCLOSURES

United States of America

United States Patent and Trademark Office

KONCEPT

Reg. No. 3,981,394

Registered June 21, 2011

Int. Cl.: 45

SERVICE MARK

PRINCIPAL REGISTER

BURDA, DOUGLAS (UNITED STATES INDIVIDUAL)
P.O. BOX 15533
LAS VEGAS, NV 89111

FOR LEGAL SERVICES, IN CLASS 45 (U.S. CLS. 400 AND 401)

FIRST USE 6-12-2010, IN COMMERCE 6-12-2010

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR

SER. NO. 85-176,628, FILED 11-15-2010

CARYN GLASSER, EXAMINING ATTORNEY



David J. Kypos

ATTORNEY FOR THE APPLICANT

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

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ANDREY PINSKY,

Petitioner,

v.

DOUGLAS BURDA

Registrant.

Cancellation No. 92054551

THIS IS EXHIBIT "4" TO THE DECLARATION OF
ANDREY PINSKY OF TORONTO, ONTARIO, DATED MARCH 23, 2012

PINSKY LAW

Intellectual Property & Technology Law

88

SUITE 900
45 SHEPPARD AVE. EAST
TORONTO, ONTARIO
CANADA, M2N 5W9

TEL: (416) 221 - 2600
FAX: (416) 221 - 2640
WWW.PINSKYLAW.CA

December 29, 2011

SENT VIA FEDEX TO:

Douglas Burda
Koncept Innovative Law
900 Las Vegas Boulevard South
Unit 1009
Las Vegas, Nevada 89101
USA

Dear Mr. Burda

Re: Trademark Cancellation No. 92054551

I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* all documents in your possession, control, or power that support your affirmative defences listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your Second Amended Answer and Affirmative Defences to Petition for Cancellation dated December 7, 2011.

I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* all documents in your possession, control, or power that support your affirmative defences listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your First Amended Answer and Affirmative Defences to Petition for Cancellation dated November 14, 2011.

Yours truly,



Andrey Pinsky

January 6, 2012

SENT VIA FEDEX TO:

Douglas Burda
Koncept Innovative Law
900 Las Vegas Boulevard South
Unit 1009
Las Vegas, Nevada 89101
USA

Dear Mr. Burda

Re: Trademark Cancellation No. 92054551

In my letter to you dated December 29, 2011, a copy of which is enclosed, I requested you to produce certain documents. I have not received either your reply to my letter, or the documents I requested to date. This is my second request to provide these documents.

I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* all documents in your possession, control, or power that support your affirmative defences listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your Second Amended Answer and Affirmative Defences to Petition for Cancellation dated December 7, 2011.

I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* all documents in your possession, control, or power that support your affirmative defences listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your First Amended Answer and Affirmative Defences to Petition for Cancellation dated November 14, 2011.

I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* trademark searches performed prior to submission of your trademark application for the trademark KONCEPT to the USPTO and also trademark registrability opinion letter(s) rendered prior to submission of your trademark application for the trademark KONCEPT to the USPTO.

Please provide these documents at your earliest convenience.

Yours truly,



Andrey Pinsky

PINSKY LAW

Intellectual Property & Technology Law

SUITE 900
45 SHEPPARD AVE. EAST
TORONTO, ONTARIO
CANADA, M2N 5W9

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TEL: (416) 221 - 2600
FAX: (416) 221 - 2640
WWW.PINSKYLAW.CA

January 16, 2012

SENT VIA FEDEX TO:

Douglas Burda
Koncept Innovative Law
900 Las Vegas Boulevard South
Unit 1009
Las Vegas, Nevada 89101
USA

Dear Mr. Burda

Re: Trademark Cancellation No. 92054551

In my letters to you dated December 29, 2011, and January 6, 2012, copies of which are enclosed, I requested you to produce certain documents. I have not received to date either your reply to my letters, or the documents I requested. This is my third request to produce these documents.

I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* all documents in your possession, custody, or control that support your affirmative defences listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your Second Amended Answer and Affirmative Defences to Petition for Cancellation dated December 7, 2011.

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I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* trademark searches performed prior to submission of your trademark application for the trademark KONCEPT to the USPTO and also trademark registrability opinion letter(s) rendered prior to submission of your trademark application for the trademark KONCEPT to the USPTO.

Please provide these documents not later than February 16, 2012. If I am not in receipt of the abovementioned documents by February 16, 2012, I will bring a motion to compel disclosure without further notice to you.

Yours truly,



Andrey Pinsky

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February 13, 2012

FILED BY ESTTA
AND SENT VIA REGULAR MAIL TO:

Douglas Burda
Koncept Innovative Law
900 Las Vegas Boulevard South
Unit 1009
Las Vegas, Nevada 89101
USA

Dear Mr. Burda

Re: Trademark Cancellation No. 92054551

In my letters to you dated December 29, 2011, January 6, 2012, and January 16, 2012, copies of which are enclosed, I made several discovery requests. I have not received to date either your reply to any of my letters, or the documents I requested. This is my fourth discovery request.

I notice that your websites www.konceptllc.com and www.douglasburda.com are not available online for some time now. Disappearance of your websites suggests to me that you are unwilling or unable to continue to defend registration of your trademark KONCEPT. If I am correct and you are unwilling or unable to continue to defend the cancellation procedure I commenced with the Trademark Trial and Appeal Board (TTAB), please advise the TTAB accordingly and please withdraw your defences to save money and time required by both the TTAB and me to continue with the process of cancellation of registration for your trademark KONCEPT.

I remind you that it is your obligation as a lawyer under the Rules of Professional Conduct of the Nevada Bar to provide timely replies to other lawyer's correspondence. It is my position that your failure to provide timely replies to my correspondence about the issues of cancellation of your trademark KONCEPT is a breach of the Rules of Professional Conduct of the Nevada Bar. Accordingly, if I am not in receipt of your reply to this letter by February 20, 2012, I will have no choice but to bring your conduct in this cancellation proceeding to the attention of the Nevada Bar via a formal complaint.

I require to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* all documents in your possession, custody, or control that support your affirmative defences listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your Second Amended Answer and Affirmative Defences to Petition for Cancellation dated December 7, 2011.

I require to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* all documents in your possession, custody, or control that support your affirmative defences listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your First Amended Answer and Affirmative Defences to Petition for Cancellation dated November 14, 2011.

I require to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the *Federal Rules of Civil Procedure* trademark searches performed prior to submission of your trademark application for the trademark KONCEPT to the USPTO and also trademark registrability opinion letter(s) rendered prior to submission of your trademark application for the trademark KONCEPT to the USPTO.

Please provide these documents not later than February 16, 2012. If I am not in receipt of the abovementioned documents by February 16, 2012, I will bring a motion to compel disclosure without further notice to you.

Yours truly,

A handwritten signature in cursive script that reads "Andrey Pinsky". The signature is written in dark ink and is positioned below the "Yours truly," text.

Andrey Pinsky

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY,

Petitioner,

v.

DOUGLAS BURDA

Registrant.

Cancellation No. 92054551

THIS IS EXHIBIT "5" TO THE DECLARATION OF
ANDREY PINSKY OF TORONTO, ONTARIO, DATED MARCH 23, 2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANDREY PINSKY

Petitioner,

v.

Cancellation No. 92054551

DOUGLAS BURDA

Respondent.

REGISTRANT'S RESPONSES TO PETITIONER'S DOCUMENT REQUESTS

1 Respondent, Douglas Burda (Registrant), herein responds to Petitioner's Document Requests. Registrant does not hereby waive any present or future objection to Petitioner's requests, nor any attorney-client privilege, as this response is made only as a courtesy to Petitioner in the spirit of judicial economy.

2 **DOCUMENT REQUEST:** I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the Federal Rules of Civil Procedure all documents in your possession, custody, or control that support your affirmative defences [sic] listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your Second Amended Answer and Affirmative Defenses [sic] to Petitioner for Cancellation dated December 7, 2011.

RESPONSE TO DOCUMENT REQUEST: Objections: this request: (a) calls for legal conclusions, (b) is vague, (c) is overbroad, (d) is unduly burdensome with respect to "all documents in your possession custody or control that support your affirmative defences [sic] listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your Second

Amended Answer and Affirmative Defenses [sic] to Petitioner for Cancellation dated December 7, 2011", and (e) calls for the disclosure of information protected by the attorney-client privilege and/or work product doctrine. Without waiving these objections, see documents from Registrant's First Supplemental Disclosures numbered 000001 through 000054 as responsive to this request. Registrant reserves the right to supplement this response prior to the close of discovery.

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DOCUMENT REQUEST: I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the Federal Rules of Civil Procedure all documents in your possession, custody, or control that support your affirmative defences [sic] listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your First Amended Answer and Affirmative Defenses [sic] to Petitioner for Cancellation dated November 14, 2011.

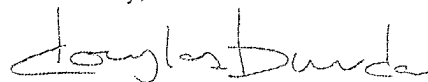
RESPONSE TO DOCUMENT REQUEST: Objections: this request: (a) calls for legal conclusions, (b) is vague, (c) is overbroad, (d) is unduly burdensome with respect to "all documents in your possession, custody, or control that support your affirmative defences [sic] listed in paragraphs 12, 13, 14, 15, 16, 17, and 18 of your First Amended Answer and Affirmative Defenses [sic] to Petitioner for Cancellation dated November 14, 2011", (e) calls for the disclosure of information protected by the attorney-client privilege and/or work product doctrine, and (f) calls for documents to which Petitioner is not entitled as the operative documents is Registrant's Second Amended Answer as established by the Trademark Trial and Appeal Board. Registrant therefore objects and offers no response thereto.

4 **DOCUMENT REQUEST:** I require you to produce pursuant to the TTAB's Order dated December 1, 2011, and pursuant to the Federal Rules of Civil Procedure trademark searches performed prior to submission of your trademark application for the trademark KONCEPT to the USPTO and also trademark registrability opinion letter(s) rendered prior to submission of your trademark application for the trademark KONCEPT to the USPTO.

RESPONSE TO DOCUMENT REQUEST: For the reason that responsive documents are absolutely protected by the attorney-client privilege, Registrant objects to such request and offers no response thereto. Registrant reserves the right to supplement this response prior to the close of discovery.

March 16, 2012

Sincerely,



Douglas Burda
KONCEPT® LLC
900 Las Vegas Boulevard South
Unit 1009
Las Vegas, Nevada 89101
Phone. (248) 217-0002
Email. dbb@konceptlaw.com
Attorney & Registrant